THE MAKING OF THE TREATY OF GUADALOUPE HIDALGO ON FEBRUARY 2, 1848. THE JAMES BRYCE HISTORICAL PRIZE ESSAY FOR 1905

BY JULIUS KLEIN

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THE MAKING OF THE TREATY OF GUADALOUPE HIDALGO ON FEBRUARY 2, 1848.[1]

JULIUS KLEIN.

History has been defined as a series of evolutionary processes,—not a mere sequence of events, or a procession of happenings, of wars, of economic upheavals, and of exhibitions of statecraft, but a "series of processes," of constantly changing movements out of which arise the progress and civilization of man. The examination, therefore, of any particular period or event in this course of evolution at once raises the questions: How does it fit in with the great scheme of evolutionary movement—does it advance it or retard it? What is the effect of its coming upon the particular form of this movement in progress at the time the event occurred?

Applying this to the subject at hand, our investigation will involve, in a word, the determination and study of the general tendency—or evolutionary process as we first called it—of which the treaty formed an element. It shall be our object to inquire into and point out the relationship existing between this vitally important document and the trend of the powerful undercurrent, the exact nature of which is to be determined.

[1] Bryce Historical Prize Essay, 1905.

In looking over the field one finds the writers upon the Mexican War quite numerous; but the majority of their works are contemporaneous American accounts—those by Cutts, Furber and Mansfield, for example—full of vivid battle pictures and gross exaggerations, inspired either by a patriotism whose ardor was exceeded only by its blindness to sober judgment, or by a profound—one might almost say religious—zeal in holding up war in all its horrors as an argument for universal peace and arbitration.[1] And because of this great variety of views, and of the numberless opinions from more or less authoritative sources, which have from time to time found expression with regard to the Mexican War and the Treaty of Guadaloupe Hidalgo, it has been deemed necessary to base this investigation in part upon the more conservative statements of authorities of the present day, but more largely—we might say almost entirely—upon material coming from sources first-hand. To this end the Abridged Debates, the Executive Documents,[2] and the Journals and Records of both houses of Congress have been extensively used. In connection with these, frequent reference will be found to official or semi-official correspondence with regard to Mexican relations.[3] Of primary importance as sources of material in a discussion of this nature are the Reports of the Supreme Court of the United States. The importance and respect attached to decisions of the judiciary have, since the time of the Stuarts and before, been characteristic of Anglo-Saxon governments. It is in the matters of constitutionality and law that the Reports carry their greatest weight and upon questions involving either or both of these two the support

[1] *E.g.* Jay, Livermore, and Ripley, the last of whom Bancroft considers to be "the most important of American authorities upon the War apart from the official documents." *Cf.* Bancroft, vol. V., p. 550.

[2] These documents of course include the Presidential messages as found both in Richardson's "Messages" and in the publications of the government.

[3] *Cf.* Appendix A.

of such recognized authority is deserving of the most profound consideration and attention. There is still another source which has been found to be exceptionally useful in the matter of furnishing an inner light upon the actual policy and methods of the Administration in question; we refer to the diary of President James K. Polk,[1] which has only at a comparatively recent date been made available to the public; of its importance and exceptional value as a source in this discussion more will be said at the proper occasion.[2] It will be noted that all of the above,—Debates, Documents, Journals and Records, Court Reports, official correspondence and the diary—may be classed as primary sources from which all arguments and statements, in order to have sufficient authority, must be deduced, and beyond which there is no appeal.

Having selected our authorities it is important to consider next the method by which the material gathered therefrom is to be handled. Various ways at once suggest themselves. We might take the treaty as a whole, compare it minutely with instruments of a similar nature, showing wherein it differs from and is similar to such treaties as that of 1803 or of 1819; we might, in a word, treat it on the whole as an example of diplomacy, as a purely international document, viewing it only in its light as the outcome of the relations existing at a particular period of time between two nations. Again, it might be regarded as the climax of a most important period of American history; it might be shown to what extent it actually did form the culminating point of the long pending, though when it finally came, short and decisive struggle between the two governments and peoples. Indeed, there are several points of view which might readily be assumed in this discussion; but in order to make the study of the subject thoroughly complete and exhaustive so that the entire field may be thus covered and the more

[1] *Cf.* Appendix C.
[2] *Vid. post* (p. 290).

important points selected for especial emphasis, it has been thought best to divide the work into two general parts and examine the treaty first from the one and then from the other standpoint. Part I will deal with the document in its purely historical aspects; in it we shall attempt to show the steady trend of events and sentiments that made the war and the treaty which closed it practically inevitable; in this part will also be included an account of the quite extraordinary conditions under which the negotiations were completed and the document was signed. In Part II, on the other hand, we shall endeavor to dissect the various questions not so much with regard to their historical setting, but rather in their political and legal aspect. We appreciate the fact that the gradation from historical investigation, pure and simple, shades off almost imperceptibly into that research which is based on the law and politics of the question; but arbitrary as this division may at first seem, the object for which it has been made and the distinction which has been drawn will, it is hoped, become plainer as the discussion progresses.

PART I.

"Had it not rained on the night of the 17th of June, 1815," writes Hugo, "the future of Europe would have been changed." Had a certain train left the City of Mexico on the 4th of December, 1847, the future of America would have been changed. For some minor reason of apparently no significance whatever, the special train which was to have conveyed Mr. Nicholas P. Trist, sometime Peace Commissioner of the United States, from the Mexican capital to Vera Cruz on that date, was delayed; and when it did depart some six days later Mr. Trist, contrary to the specific instructions of his letter of recall of October 6, 1847, did not accompany it for reasons which we shall later investigate. In the interval following, negotiations were resumed and the Treaty of February 2, 1848, was the result. [250]

In order that our conception of the treaty and its setting may be deep-rooted and fundamental, a brief review of the relations between the United States and Mexico as they existed before the breach in 1845 and 1846, has been deemed essential. The causes which have been ascribed to the war are numerous and varied. It shall be our aim, however, in this part merely to give the events as recorded in history; the discussion of the policy of the President and his administration, and his interpretation of those events have been reserved for later consideration.

The agitation for the acquisition of California and the vast stretch of territory intervening between that province and Louisiana was begun as far back as 1835. In that year, Secretary of State Forsyth proposed the purchase of California from Mexico but without favorable response from that government. Commodore Jones of the United States Navy, while cruising along that coast, received the report that Great Britain had secured the cession of California from Mexico, and he forthwith landed a force at Monterey and declared the province annexed to the United States; but ascertaining, upon later investigation, that the report was without foundation, he withdrew and sailed away. Congress by subsequent action disavowed his act and the affair was dropped.[1] The revolt of Texas from Mexico and the consequent disruption of affairs in that country brought on a renewal of the desire for the proposed acquisition. Mr. Butler, the American Minister at Mexico, was instructed (August 16, 1835) to negotiate for a cession of all Mexican territory north of the Rio Grande and 37° North Latitude;[2] but this attempt also resulted in nothing. Previous to these efforts on the part of the government to secure the coveted prize, a number of fruitless attempts had been made on

[1] House Ex. Doc. No. 166, 2nd Sess. 27th Cong.

[2] House Ex. Doc. No. 42, 1st Sess. 25th Cong.

the part of various private individuals to advance the slaveholding interests of the South by securing practical possession of the territory in question. We need merely mention such attempts as that of forcible seizure in June, 1819, or that of colonization in 1821.[1] But all of these, like the efforts of the government, were of no avail. The first really vigorous attempt which we find the government making toward this end occurred when Mr. Slidell was appointed Special Commissioner to Mexico to secure the proposed change in the boundary.[2]

The recognition and acquisition of Texas by the United States are happenings which need not concern us here; nor do the events which followed—the long catalogue of brilliant victories of the invading forces of the United States under Generals Taylor and Scott—deserve our attention in this investigation. From the north and east these two armies had pierced the vitals of the country and were in possession of practically all important points. Sparsely settled New Mexico and California fell as easily won prizes to such leaders as Fremont, Kearney, and Sloat. In spite of the hopelessness of the struggle, torn as it was by constant internal disruptions, the bearing of the Mexican government in its relations to the United States was marked by a spirit of dignity and courage quite in contrast to the attitude assumed by the northern republic especially toward the later part of the struggle.[3] After the capture of Vera Cruz by Scott, the President determined to send a diplomatic representative of the government to accompany the army on its march to the capital to be ready to negotiate the terms of a treaty at the first available opportunity.[4] To this end on April 15, 1847,

[1] *Cf.* Jay *op. cit.* for a more detailed account of these and other similar expeditions.

[2] House Ex. Doc. No. 69, pp. 33-34, 1st Sess. 30th Cong. *Cf.* Appendix A (1), pp. 297-298.

[3] *Cf.* Foster *op. cit.* p. 316.

[4] Sen. Ex. Doc. No. 52, pp. 81-85, 1st Sess. 30th Cong. *Cf.* Appendix A (2), p. 299.

he commissioned Mr. Nicholas P. Trist, Chief Clerk of the Department of State, "to negotiate and conclude a settlement of the existing differences and a lasting treaty of peace"[1] with Mexico. Trist carried a projet of terms acceptable to the administration which had been furnished him by Secretary of State Buchanan. Among other things, it called for the cession of the disputed strip between the Nueces and the Rio Grande Rivers, of New Mexico, and both Upper and Lower California, together with a guarantee of a right of way across the Isthmus of Tehuantepec.[2] The governing body in the country at the time of his arrival—in fact the only federal authority then existing in Mexico—was "the sovereign constituent Congress" then sitting in the City of Mexico—a body "regularly elected for the twofold purpose of, first, re-establishing (with amendments) the constitution of 1824" that had been annulled "by military violence and usurpation; and secondly, of disposing of all questions connected with the war."[3] From August 27, to September 7, 1847, during an armistice declared for that purpose, Trist met similarly empowered representatives of Mexico to accomplish the object of his visit, but their labors were of no avail. In compliance with his instructions, he demanded the cession of Lower California and the other provinces as named above.[4] These terms were immediately rejected by the Mexican commissioners, who refused to give up Lower California; in turn they submitted a counter-projet,[5] in which they suggested the Nueces as a boundary, to which Trist would scarcely listen. Following these mutual rejections, negotiations were broken off, and hostilities resumed. But already the government set up by the "con-

[1] Sen. Rep. No. 261, p. 4, 2d Sess. 41st Cong.
[2] Sen. Ex. Doc. No. 20, 1st Sess. 30th Cong.
[3] Sen. Rep. No. 261, p. 4, 2d Sess. 41st Cong.
[4] Art. IV, "Projet submitted by Mr. Trist"—Sen. Ex. Doc. No. 20, p. 5, 1st Sess. 30th Cong.
[5] This counter-projet is quoted in full in Ramsey's translation, pp. 325-328. *Cf.* also Sen. Ex. Doc. No. 20, pp. 9-12, 1st Sess. 30th Cong.

stituent Congress'' was going to pieces. ''From that event,'' says Trist,[1] referring to the declaration of the armistice just alluded to, ''dates the total dissolution of the Mexican government. There has not been since that moment any recognized authority in existence with whom I could communicate.'' The marked similarity between the condition of affairs at this stage of the war and that which immediately followed the Franco-Prussian War, is worthy of mention; the difficulty lay, not so much in the agreement as to the terms of a settlement, as in the finding of the properly constituted and stable treaty-making body of the defeated country, with which negotiations might be carried on.

Hearing of the failure of his efforts, the government at Washington, on October 6, 1847, ordered Trist to desist from further negotiations and to return ''by the first safe opportunity'' to the United States;[2] the commanding general of the American forces was thenceforth to look after the interests of the country in the matter of arranging the close of the war. Scott was instructed by Secretary of War Marcy (October 6, 1847) to ''embrace the proper occasion to notify the Mexican authorities of the fact'' of Trist's recall. ''By both parties (*i.e.,* the Puros and Moderados, the war and peace party respectively) the peace men were considered floored; this (*i. e.* Trist's recall) was considered the *coup de grâce* for them.''[3] Thenceforth the peace party need expect no further encouragement from the United States; the war would be continued until the resources of Mexico were entirely exhausted, until the invading armies were in possession of every part of the country, when the name of Mexico would vanish from the list of nations. This, in the opinion of

[1] His dispatch of Sept. 27, 1847, to Sec'y Buchanan, Sen. Rep. No. 261, p. 5, 2d Sess. 41st Cong.

[2] *Cf.* Appendix A (3), p. 301.

[3] Trist's reply to Sec'y Buchanan acknowledging the receipt of his recall—Sen. Rep. No. 261, p. 6, 2d Sess. 41st Cong.

almost all who heard of it, would be the effect of Trist's recall.

The "first safe opportunity" that presented itself, for Trist's return was on December 10, 1847. A special train was to have conveyed him from the capital on the 4th, but it was delayed until the 10th; had it left on the date originally set, his return would have begun then, and any future terms which the President might have granted would have depended upon the later events of the war.[1] But the short postponement of six days of the opportunity for his departure resulted in the exact reversal of the whole table of subsequent events. Years later Senator Sumner, in the report of the committee appointed by the Senate to investigate the negotiations in question, declared this apparently insignificant incident to "constitute an event that stands alone in history and is not likely ever to have a parallel."[2]

Since his arrival, Trist had been treated by Scott as an unwelcome guest[3] whose presence would interfere with military operations; the decided coolness of Scott's reception and the lack of interest on the part of the latter in the commissioner's coming in contact with the Mexican representatives forced Trist to resort to the good offices of the British Legation to accomplish his purpose. It was during the interim mentioned in the previous paragraph, that, through his correspondence with Mr. Edward Thornton, Secretary of the Legation,[4] and led on to no small extent by his own patriotic farsightedness, he determined to "heed the spirit of his instructions without standing upon the strict letter." Thus Scott by his very treatment of Trist in forcing him into closer relationship with Thornton, indirectly caused the strengthening of the de-

[1] *Cf.* Appendix C, p. 309.

[2] Report of the Committee on Foreign Relations, accompanying Sen. Bill No. 1068, dated July 14, 1870.

[3] *Cf.* Foster, *op. cit.* pp. 316-*et seq.*

[4] *Cf.* Appendix A (5), p. 302, note.

termination of the former to disobey his recall, strike out boldly upon his own responsibility, and secure a treaty of peace conforming as closely as possible to his original projet. It was upon his own decision that "the early cessation of the war, or its indefinite protraction depended."[1]

It was indeed fortunate for both belligerents that Trist made himself guilty of so "monstrous an insubordination," as Von Holst calls it.[2] This great authority finds difficulty however in attributing a well-defined cause to the commissioner's action; he does not know, he says, whether to assign it to "vanity and naïve audacity, or to a far-seeing and lofty patriotism" before which the thought of personal welfare was lost in the search for national well-being. But there does not seem to be sufficient ground to justify this question as to the sense which prompted him to direct disobedience of express orders; a study of his correspondence and dispatches, both private and official,[3] will, we think, bear out a justification for Trist's action upon purely altruistic grounds. He felt that the ending or protraction of the war rested in his hands. It was a question of either assuming a personal risk and thus accomplishing the actual purpose of his mission by securing the peace which was desired, or of clearing himself of all possible danger, and by strict obedience to what we shall afterwards see was a hasty and ill-judged order upon the part of the administration, allow the war to continue, and the almost certain obliteration of Mexico to take place. We owe it to the keenness of his insight into the outcome of his action, to his entire disregard of his own security, and to his firm adherence to what he adjudged to be the real policy and welfare of his government;—to these are we indebted for the subsequent trend of events—for the

[1] *Cf.* Appendix A (4), p. 301.

[2] *Op. cit.* Vol. III, p. 344.

[3] These may be found quoted in full in connection with Sen. Rep. No. 261, 2d Sess. 41st Cong.; also in Sen. Ex. Doc. No. 52, 1st Sess. 30th Cong. See also Appendix A (4 and 5), pp. 301-302.

avoidance of a line of policy the outcome of which would have been a question of the gravest doubt. "Strange and unaccountable for its pertinacity"[1] as his behavior may appear to some, "a circumstance most fortunate to the United States"[2] as it may seem to others, none may question the gravity with which its outcome was fraught and the vitally important question connected with it. History records few events of a similar nature that had so much depending upon their results—few examples of such fixity of purpose and adherence to principle in the face of such iron-bound instructions.

The Mexican government was by this time indeed in a state of collapse. It was a case of "Now or never," as Trist says;[3] if the already wavering peace party were not to receive immediate encouragement by his continuing the negotiations, affairs might come to a close exactly contrary to "the earnest wishes of both" republics. By the Mexican constitution[4] the presidency if vacant was filled temporarily by the presiding officer of the Supreme Court; but in September, 1847, the latter officer had died. Congress, whose duty it was to elect a successor to the position, could be convened only by the proclamation of the president; but by the resignation of Santa Anna there was no one acting as chief executive, and affairs had thus reached a dead level. From this brief sketch some idea of the chaotic state of affairs may be formed; one can easily appreciate the delicate adjustment of things—how the slightest disturbance on the part of the war party would have at once annihilated the last vestige of a Mexican Government and have established a condition of anarchy. It was with the hope of preventing this that the leaders of the Moderados (peace party) prevailed upon Peña y Peña, the able statesman then senior judge of the Supreme Court,

[1] Chase, *op. cit.* p. 258.
[2] Von Holst, Vol. III, p. 344.
[3] *Cf.* Appendix A (5), p. 302.
[4] *Cf.* Hall, *op. cit.* § II, Art. 79.

to assume the office of provisional president, and the Congress could thus be summoned by his proclamation. Upon its meeting, it immediately proceeded to elect a president *ad interim* to serve until January 8, 1848, the date of the regular election. In both these elections the friends of peace narrowly missed defeat through a combination of Santa Anna and the war party; they finally triumphed, however, and at the opening of the year, an administration decidedly in favor of closing the war, headed by General Herrera, was installed. A report was made in the Congress then meeting at Queretaro, regarding the condition of the army; in it 65,000 troops were declared necessary to continue the war with any prospect of success. The possibility of raising such a force was not to be considered for a moment. The army of Mexico was in utter ruin and her privateer commissions and certificates of citizenship were drifting about the market without purchasers or even bidders. To the persistence of Trist and the Moderados is Mexico indebted for the preservation of her national state—for the fact of her existence as a sovereign government at the close of so critical a period. A commission was at once appointed by the newly installed executive to confer with the American representative and negotiate for a "treaty of peace, friendships, and limits."

Ever since his coming the presence of Trist was all that kept the cause of peace alive; upon this was built the last remnant of a government in the crumbling country. At his instigation, acting as the representative of the United States, and on the strength of his faithful assurances of the sincerity and earnestness of his government's desire for peace, "what was universally regarded as an impossibility,"[1] namely the building up of at least the semblance of a government and the attainment of a settlement of the war, was accomplished.

[1] Sen. Rep. No. 261, p. 7, 2d Sess. 41st Cong.

Shortly after that bolt out of the clear sky—his recall by the authorities at Washington—he made known his line of action for the immediate future.[1] He recognized the perfect liberty of his government to disavow his proceedings from then on, should it see fit to do so. This, in brief, was his plan: With the consent of the Mexican government he would continue the work of agreeing upon a treaty with the commission with whom he had already been corresponding for some months. It was, of course, to be distinctly understood that any terms or agreements which he might make were, so far as his own government was concerned, to be considered entirely invalid, and were to have no binding force upon it. Though the stamp of absolute legality be wanting on the result of their labors—should they agree upon a treaty—nevertheless there was the possibility of its securing the approbation of the proper authorities at Washington.

Such in fact was the actual outcome of the difficulty, and success thus crowned Trist's efforts. The Mexican government on receiving official information[2] through General Scott of Trist's recall, appreciated the true state of affairs—unlike the administration in power in the United States, as we shall afterwards see—and accepted these proposals after some hesitation.[3] It has been said that the American envoy himself chose the place of meeting, the little village of Guadaloupe Hidalgo, a suburb of the capital, because of the veneration attached to it by the people

[1] Dispatch to Sec'y Buchanan, Dec. 6, 1847. House Ex. Doc. No. 69, 1st Sess. 30th Cong.

[2] *Cf.* Sec'y Marcy's letter of instructions to General Butler, Scott's successor, Jan. 26, 1848. Sen. Ex. Doc. No. 52, p. 146, 1st Sess. 30th Cong.

[3] Scott had, by this time, changed his attitude toward peace (*vid. ante* p. 255; the subsequent action of the Mexicans was largely due to his encouragement, in the course of which he gave it as his "confidential belief that any treaty which Mr. Trist might sign would be duly ratified at Washington." Scott, Vol. II, pp. 576 *et seq.*

of the country.[1] Their meetings were numerous, their conferences long; but after six weeks of almost incessant negotiating, during which Trist, single handed, maintained the principles and instructions of his commission with exceptional grace and skill,[2] on the 2d of February, 1848, the Treaty of Guadaloupe Hidalgo was signed—the climax to one of the most remarkable periods of diplomacy and policy in American history.

The treaty consisted of twenty-three articles and an additional and secret one extending the time for the exchange of ratifications. Its provisions were very similar to those contained in Trist's original projet which had been rejected by the Mexican commissioners in August, 1847, in accordance with Santa Anna's instructions. At the time the treaty was signed the Mexican Congress was not in session; a good number of the members, however, were then at Queretaro, where the ratifications were subsequently exchanged, and of these a large majority strongly approved of the action taken, in spite of the fact that the American negotiator had been stripped of all authority by his government. General Scott, immediately upon the completion of Trist's labors, instead of prosecuting the war with vigor, which he had a perfect right to do, and which was almost expected of him, awaited the answer to his report of February 2, in which he had enclosed the treaty.

In the very midst of its discussions on various methods of increasing the army and prosecuting the war, the American Congress had this illegal treaty—illegal so far as the

[1] In his dispatch of Feb. 2, 1848, to Sec'y Buchanan, notifying him of the signing of the treaty, Trist says it was signed at the city of Guadaloupe, a spot which, "agreeably to the creed of this country, is the most sacred on earth." *Cf.* Senate Ex. Doc. No. 52, p. 102, 1st Sess. 30th Cong.; also Bancroft, Vol. V, p. 540.

[2] The Mexican commissioners declared, in their final report, that "if at any time the work of peace is consumated, it will be done by negotiators adorned with the same estimable gifts which in our judgment distinguished this minister (Trist)." Translated by order of the Senate, Sen. Ex. Doc. No. 52, p. 345, 1st Sess. 30th Cong. *Cf.* also Sen. Rep. No. 261, p. 5, 2d Sess. 41st Cong.

United States was concerned—dropped down upon it. Although the powers of the American envoy as such had been revoked before the document had been signed, the president very properly regarded this as a matter resting between Mr. Trist and his government, and on February 22, 1848, the treaty was therefore communicated to the Senate, with the recommendation that it be ratified.[1] Then came three long and anxious weeks of debate and argument, during which period the treaty hung in the balance. Many writers on the subject convey the impression that with a few unimportant amendments the document was readily ratified by the Senate. Such, however, was not the case. Even before it had been laid before that body for its consideration, since its arrival in Washington a short time before, it had been thought of only as the entirely unauthorized product of the action of an envoy invested with no official powers whatever; and thus, on account of its illegal origin, how, it was asked, could the government set its approving mark upon an agreement drawn up by one who was totally without the proper authority to involve that government in such an agreement? When the treaty was laid before the Senate the same line of opposition was continued.[2] But this was by no means the only objection advanced; the opponents to the ratification came from all sections of the country and belonged to both political parties, and therefore, as might be naturally expected, were moved by a number of very different motives. Some—a part of the Whigs, for example—still were against the acquisition of any new territory whatsoever; they argued that so vast an acquisition with its "population of 150,000 hostile people, unwilling to be united to us and unfit to be trusted with a participation in our free forms of government," would be a mill-stone upon the neck of the nation and would inevitably drag the country down to utter

[1] *Cf.* Appendix C, p. 311.

[2] *Cf.* Sen. Ex. Doc. No. 52, 1st Sess. 30th Cong. for a detailed account of the struggle for ratification.

ruin—the identical argument advanced against every extension of our boundaries without exception from 1803 to 1898. Had this branch of the opposition succeeded in its efforts to strike out Article V,[1] the treaty would, without question, have failed of endorsement by the majority required for ratification. Then there were those who demanded more territory than that given by Trist's agreement; Mexico, they said, had caused us sufficient trouble in the past to warrant our making a far greater extension of our boundaries at her expense; indeed not a few advocated the absorption of the whole of the conquered republic. The chief objection, however, was raised against the document because of the lack of proper authority back of it. Webster, for example, introduced a resolution calling for the postponement of any further consideration of the President's message of February 22, 1848, (the one referring the treaty to the Senate for ratification), and "recommending that the president nominate commissioners plenipotentiary, not fewer than three, to proceed to Mexico for the purpose of negotiating a treaty of peace, boundaries and indemnities due to American citizens."[2] The adoption of such a resolution would, of course, have meant the ignoring of Trist's document altogether, and would have necessitated the risk of perhaps never securing the appointment of a corresponding commission by the already tottering Mexican government.[3] And so the struggle for and against the treaty went on—by no means the mere passive formality of voting upon it, as some authors would have us believe. It was here in the Senate that its fate was to be decided, and the strenuous efforts put forth by both defense and opposition shows how well aware of this fact that body was. When the final vote was taken, on March 16, 1848, and the ratification of the treaty by the Senate was completed, the shifting of but

[1] *Cf.* Appendix B, pp. 304-305.

[2] Sen. Ex. Doc. No. 52, p. 4, 1st Sess. 30th Cong.

[3] Senator Houston's resolutions of Feb. 28, 1848, as well as those of various other Senators are of the same substance as Webster's.

three votes from one side to the other would have changed the result,[1] there being 38 yeas and 14 nays.[2]

Why, it might be asked, did the Senate in the face of such many-sided, vigorous opposition on the part of so many of its members, endorse the result of Trist's negotiations? It was simply and solely the accomplishment of that mightiest of powers in the affairs of the United States—public opinion; the people wanted peace, and it was the unanimity of this desire that forced the Senate to accept the earliest opportunity that presented itself to conclude the war. This grinding of the heel of oppression upon an already beaten antagonist was becoming distasteful to the body of American citizens; the war must stop; "the tide of public opinion," said Calhoun,[3] "is running with irresistible force against it." "The press on all sides throughout the country united for once"[4] in the common cause for peace; an already potent popular demand for the cessation of hostilities steadily grew in strength and volume as it rolled on. Before these forces (powers, they might well be called) the Senate could not, dared not stand.

Having been ratified by the proper treaty-making authority in the United States, the document was sent to the Mexican Congress for endorsement. There again it had to face an opposition almost the entire substance of whose argument was the lack of properly sanctioned authority back of the very negotiations upon which the treaty was built. It was confirmed, however, as the only resort open to the country, almost dismembered as it was by internal disruptions, and shattered by the irresistible blows of an external foe. On the 30th of May, of the same year, the necessary ratifications were exchanged at Queretaro by the American government through Messrs. Sevier and Clifford, and by Señor Rosa, Minister of Foreign Relations, on the

[1] Webster's Works, Vol. II, pp. 266-7.
[2] Sen. Ex. Doc. No. 52, p. 36, 1st Sess. 30th Cong.
[3] Works' Vol. IV, p. 442.
[4] Webster's Works, Vol. V, p. 266.

part of Mexico. Thus was the treaty of Guadaloupe Hidalgo entered upon the pages of history as an actuality,—a document demanded by the force of public opinion in the northern republic, imperative to the very existence of the southern state; questionable as was the legality of its origin, it wrought sweeping changes in North American geography and made subsequent history far different from what it would probably have been.

It might be well to insert here the "strange sequel to the negotiations." Such wilful disobedience on Trist's part roused the executive to severe measures; there being no favorable response to the letter of recall of October 6, 1847, an order for his arrest and forcible return to Washington was given the military authorities then in Mexico. But by the time this communication arrived, the treaty had already been signed and the object of his mission accomplished; the order was, therefore, not executed and Trist returned to the United States of his own free will, April 8, 1848. Here he found an embarrassing and unfortunate state of affairs awaiting him. Since the date of his recall his name had been stricken from the roles of the State Department—his pay had been stopped before his work had fairly begun and he had been dismissed in disgrace from the service. It was not until twenty-two years afterward that the government saw fit to correct this offense against the dictates of fairness and good judgment. The negotiations described above, particularly the part which Trist played in them, were made the subject of a special investigation and report by the Senate Committee on Foreign Relations, of which Mr. Sumner was chairman.[1] It was left for the Congress of another generation to appreciate the true value to his country of the services of the unjustly disgraced envoy, and to some extent, at least, to make recompense for the bad policy and the lack of fair-mindedness of its predecessor. On the 20th of April, 1871, an

[1] Sen. Rep. No. 261, 2d Sess. 41st Cong.

appropriation was made in favor of Mr. Trist of $14,560.[1]

Thus closed what might well be called a shaded period in American history. "The United States was in the wrong; all the world knows it, all honest American citizens acknowledge it."[2] And yet, though it was a war forced into being by the one without the substantial basis of a just provocation, and accepted by the other, weak and divided as it knew itself to be, with an unaccountable lack of foresight and consideration of results, nevertheless it must be admitted that the outcome of the struggle as embodied in the treaty, was one which, sooner or later, by one way or another, because of the very characteristics of the two peoples and the nature of their relations, was bound to come about. In other words, given a strong, energetic nation, full of life and activity, place that nation beside a people of different blood, possessed of no virility, listless and unprogressive in the very things which their environment should encourage—in such a situation there can be but one outcome. "It is all but impossible for a feeble state, full of natural wealth which her people do not use, not to crumble under the impact of a stronger and more enterprising race."[3] The document under discussion was but the natural, the inevitable result of the situation and condition of affairs. Had the Mexican war never come about, and had the treaty which closed it never been drawn up, if the teachings of history from its very beginnings warrant the making of any prophecy whatever, we have every right to believe that there would have been another treaty, at another time but that its substance would have been, upon all the more important points at least, practically identical with this one. Then the title of this discourse would not have been what it is, but a change in name and other minor details would suffice to make it suit this later, imaginary document. The Treaty of Guadaloupe Hidalgo

[1] 17 Stat. at Large, 643.

[2] Bancroft, Vol. V, p. 543.

[3] Bryce, *op. cit.* Vol. II, p. 413.

of February 2, 1848, was a thing prescribed to history, which sooner or later it must record; such might not have been its name, such might not have been its date, but in the ultimate, its substance and effect must come into being, it made no difference when or where or under what circumstances; there was no alternative.

PART II.

When one mentions the Treaty of Guadaloupe Hidalgo, the first thought that naturally arises is of the radical change in the boundary which it effected; the common conception of the treaty, indeed, is that it was the means of vast territorial expansion on the part of the United States. "The masses think in events, not syllogisms." The single events of the acquisition of California and New Mexico—meaning of course the Mexican provinces of those names[1]—is the distinguishing feature of this document in the minds of most of those who have occasion to think of it. In Part I our attention has been confined to a pure and simple historical narrative of the *events* leading up to and concerning the making of the treaty: the early relations between the two countries have been briefly indicated; the beginnings and steady growth of the desire to acquire the coveted territory up to the fulfilment of this longing by the treaty; a sketch of the negotiations and of the peculiar circumstances under which the document was signed; an account of the opposition to it and its final ratification; and lastly, a statement of the importance of the subject under discussion, of its position in the history of America—all these topics have been dealt with, more or less in detail, thus far. It will be our endeavor, in this part, to discuss, not the historical events of the period in and of themselves, but rather the political aspect of the question, the points of law—both international and municipal—which must of necessity demand considera-

[1] *Cf.* Map, Appendix D, p. 313.

tion in any thorough investigation of this character, and to inquire into the policy and plan of action which lay back of the whole series of events of this period of which the treaty was the climax. The policy, the politics, and the law of the treaty, will, in other words, concern us in this part, as contrasted with the history of it, pure and simple, as given in Part I. We are aware that this distinction seems quite arbitrary, that "history is past politics;" but taking the mere chronicle of events as given in Part I, we think the contrast which has been drawn here between it and the examination of the motives, political theories, and judicial opinions concerning the document, which is to follow, is based upon sufficient ground to warrant its being made.

The first phase of the discussion which we shall take up will be that concerning the law of the treaty, based largely upon the decisions of the Supreme Court. In the examination of this, the legal aspect of the question, it has been thought best to systematize and arrange the method of procedure by dividing the field into the following distinctly separate parts: First, the legality of the treaty—a review of its articles and a brief inquiry into their nature; second, those questions of international law involved—a phase of the subject which any thorough consideration of the treaty cannot omit; third, the effect of the document upon the extension of the boundaries of the United States when viewed from a purely technical, legal standpoint; fourth, the relationship of the constitution and the acquisition of the new territory, as affected by the treaty; fifth, the effect it had upon the status, the government and the law of the new possessions; and sixth, and last, the true legal authority in control of California and the rest of the cession.

The first aspect, then, in which we shall inquire into the law of the treaty as it has been called above, is in regard to the context and legality of the document itself, keeping constantly in mind that the examination is to be

one from a purely legal standpoint. It is not intended at this particular point, to examine each article of the document in detail, for each of the more important ones will be taken up under the various topics to which they belong; a short summary of some parts of the treaty has, however, been deemed necessary in order that we may have a good foundation upon which to build our later examination of the legal characteristics of the document as a whole.

There are many possible arrangements of all the different articles; a very convenient one, for example, would be the separation of those that were temporary in their effects, from those that are permanent; but for present purposes a brief review of the various parts in their order has been thought essential.[1]

Article I declares a "firm and universal peace" between the two republics. Although this is "one of the usual formalities" common to all treaties of peace, this declaration nevertheless has its significance which some—not many—writers have carefully pointed out.[2] This treaty effected an ending to the Mexican war; by this stipulation, calling for a universal peace and implying a perpetual one, it is not meant that there shall never again be war between the two republics; the terms used apply only to the particular war terminated by this document; and as far as this struggle was concerned, the peace was universal and perpetual—hostilities could not be renewed for the same cause; but over any future cause for a breach between the two republics, this article had no control whatsoever.

In Articles II, III and IV, are found purely temporary provisions regarding the handing over of the parts of the conquered territory to Mexico. We shall have occasion to

[1] Copies of the treaty in full are available in a number of works —9 U. S. Statutes, 922; Ripley, Vol. II, pp. 581-585; Snow, pp. 185-192; Sen. Ex. Doc. No. 47, p. 681, 2d Sess. 48th Cong.

[2] *E.g.* Wheaton, *op. cit.* § 3, p. 610.

refer to Article III at a later stage of the discussion in dealing with another phase of the legal side of the treaty.

In Article V we come to what, without question, has been rightly regarded as the most important part of the document. About this all the rest is hung—this embodied the object of the war, all the rest is accessory to it. There is no need of an explanation; it merely defines and fixes the boundary between the two countries as it is today, except for the subsequent addition of the so-called Gadsden Purchase in 1853.[1]

Articles VI and VII are of no especial importance and are self-explanatory.[2]

Articles VIII and IX, particularly the latter, merit considerable attention in that similar articles are found in every treaty of cession which the United States has entered into in its history, and a comparison is for that reason essential to a good understanding of the document. Article VIII is merely supplementary to the one after it and is therefore considered along with it. As originally drawn up by Trist Article IX provided for the incorporation of such Mexican inhabitants as remained in the ceded territory with the intention of becoming citizens, and their admission into the Union, "as soon as possible according to the principles of the Federal Constitution, to the enjoyment of all the rights of citizens."[3] This proved unsatisfactory to the Senate; they did not wish to have it implied that the "principles of the Federal Constitution" demanded or provided for the admission of newly made citizens "as soon as possible;" on the contrary, as amended by that body, this article gives Congress, not the Constitution, the power to exercise its discretion in admitting them, at the time which shall be judged of by it as proper. As amended this part of the treaty is in substance the same as the provision regarding citizenship in the cession

[1] *Cf.* Map, Appendix D, p. 313; also Appendix B, pp. 304-305.

[2] *Cf.* Appendix B, p. 305.

[3] *Cf.* Appendix B, p. 305.

of 1803, and in all those of subsequent date; it is in conformity especially with the more modern ideas on the subject. We shall have occasion to refer to this subject of citizenship later, when dealing with the question of the legal status of the territory acquired and its inhabitants.

When the President sent the treaty to the Senate for ratification he did so with the recommendation "to strike out the tenth article;" this leads naturally to an inquiry into its contents, and we find it indeed quite "unaccountable how it should have found a place in the treaty."[1] It is, to say the least, strange that such a stipulation should have appeared in the document. Trist was given no instructions whatever on this point; his projet specified nothing with regard to it;[2] we have been unable to find any reason for his inserting it, either in his personal or official correspondence. Suffice to say, the article appeared in the paper signed at Guadaloupe Hidalgo, February 2, 1848; but was stricken out, along with a few other less important clauses, by the President and the Senate. Had it been allowed to remain it would have meant the resuscitation of any number of grants of lands in the ceded territory which had become mere nullities, in that it would have given grantees the same period of time after the exchange of ratifications to perform the conditions on which the grants were made, as they had been originally entitled to. It would indeed have proved to be a most fruitful source for otherwise unnecessary litigation; but the courts would have been compelled, on the very face of it, to disregard it as a violation of one of the most sacred of American privileges—the right to hold property justly acquired. Here would have been a case where a treaty as the "supreme law of the land" would have worked a most appreciable stroke of injustice. Had the Mexican govern-

[1] *Cf.* Appendix A (6), p. 303.

[2] *Cf.* Message of the President to the Senate, Feb. 23, 1848, Sen. Ex. Doc. 52, 1st Sess. 30th Cong.; also his message to the House, Feb. 8, 1848, Benson's Debates, Vol. XVI, p. 303.

ment insisted upon the retention of this article, we learn from the instructions to the American commissioners sent to exchange ratifications that "all prospect of immediate peace is ended and you may give them an absolute assurance." Fortunately this was not found necessary and the treaty was ratified without this stipulation regarding land grants.

Article XI need not concern us; it was merely a temporary provision and was entirely abrogated shortly after.[1]

The payment of fifteen millions of dollars by the United States is arranged for in Article XII. During August of 1846 three millions of dollars were appropriated "to enable the President to conclude a treaty of peace, limits, and boundaries, with the Republic of Mexico, to be used by him in event that the said treaty when signed * * * and ratified * * * shall call for the same or any part thereof."[2] And so, when the present document was signed, there was need of an appropriation of but twelve millions, as a part of the sum called for in Article XII was already in the hands of the executive. Some writers[3] looked upon this placing of three millions of dollars in the hands of the executive almost without restriction as a preposterous offense against the democratic nature of our government—this "vesting the President with the powers of a despot." They did not realize the necessity of an unhampered, properly timed action on the part of one officer. The whole of the operations against the late insurrection in the Philippines was conducted by the President; Congress in its official capacity knew nothing whatever of the trouble. So too, this entrusting the executive with three millions was merely the outcome of a need enforced by the condition

[1] *Cf.* Appendix B, p. 307.

[2] Sen. Ex. Doc. No. 107, p. 5, 2d Sess. 29th Cong.

[3] *E.g.* Jay, *op. cit.* pp. 183 *et seq.;* speech by Senator Corwin, quoted in Hart's "History by Contemporaries," p. 24; also a few other contemporaneous authors.

of things at the time and entirely in accord with law and equity.[1]

All Articles from XIII to XX inclusive, excepting XIII which will be discussed directly, are unimportant in this discussion and will not concern us here.[2]

The claims of American citizens against Mexico, which were finally settled by Article XIII, had served as long-standing sources of trouble between the two republics. Far back in Jackson's administration there was a strong effort made on the part of the State Department to stir up trouble over certain trivial matters of this kind; but try as it might, the department could muster but eighteen claims and of these, it confessed it was "not in possession of positive proof."[3] From that time down to the Treaty of 1848 constant reference was made to the inumerable "outrages upon the property and persons of American citizens," but by Article XIII of the present treaty they are set aside once and for all. Regarding the right of the government to do this there can be no doubt. The Supreme Court as early as 1796 held that the treaty-making power of the United States could control and dispose of the claims of citizens in any manner it thought "necessary to preserve the peace and welfare of the country."[4]

The remaining parts of the treaty may be disposed of with a few words. Article XXI while apparently guaranteeing arbitration as a means of settling any future trouble, in reality does nothing of the sort, for the provision is made that there be peaceful settlement of all differences *unless* one of the parties deems such a means of adjusting the difficulty "altogether incompatible with the nature of

[1] *Cf.* Elmes, *op. cit.* § 632, for a legal statement of this question; Rev. Stats. § 291; Randolph, *op. cit.* p. 23; Wilson, *op. cit.* Vol. IV, pp. 122-123.

[2] *Cf.* Appendix B, pp. 307-308.

[3] House Ex. Doc. No. 105, p. 26, 2d Session. 24th Cong.

[4] Ware *vs.* Hylton, 3 Dallas, 199; *cf.* also Butler, *op. cit.* Vol. II, p. 285.

the difference,''[1] which leaves things practically as they were before.

The rest of the treaty—Articles XXII and XXIII, as well as the ''additional and secret article'' which was later stricken out by the Senate—are self-explanatory and need no comment.[2]

We come now to the question as to the legality of the treaty itself, taken as a whole. This need not concern us long; indeed, were it not for the fact that at the time of the discussion of the document in the Senate much of the argument of the opposition was based upon the alleged illegality of the agreement because of Trist's behavior after being recalled, we should be tempted to forego any discussion of this point. As far back as 1806 a statute was passed forbidding any negotiations by anyone except the duly accredited appointees of the President.[3] Polk, however, very properly looked upon Trist's obedience or disobedience as a matter resting solely between the latter and his government. Though all of his acts after the date of his recall could be avowed or not by the authorities at Washington, yet ''Mexico was not capable of taking such exception.''[4] She had full and official knowledge of the American envoy's recall, and since, acting under this knowledge, her representatives had negotiated a treaty with him, it rested only with the United States whether or not the result of Trist's procedure should stand. On February 22, 1848, the President submitted the document to the Senate with the recommendation that it be ratified. By the executive action so taken the invalidity in which it had originated was cured, and it became transmuted into a genuine treaty, ''so far as the President's sole authority was competent to impart this character to

[1] *Cf.* Appendix B, p. 309.
[2] *Ibid.* pp. 308-309.
[3] *Cf.* Hart, ''Actual Government,'' p. 441.
[4] Polk's message of Feb. 29, 1848, Sen. Ex. Doc. No. 60, 1st Sess. 30th Cong.

it.''[1] Trist was an appointee of the President, equipped by order of the latter with an outline of terms acceptable to the administration; his recall came through the executive; in a word, being a representative of that department of the government, he was responsible to it alone; therefore any breach of orders on his part was something resting only between his principal and himself. For that reason, we may say that by submitting the treaty to the Senate and recommending its ratification, the President destroyed the effects which its unauthorized origin may have had. Regarding the powers of the Mexican commissioners, there can be no doubt as to their authority to sign any agreement they saw fit. They derived their full powers on the 30th of December, 1847, from the President *ad interim* (General Anaya) ''constitutionally elected to that office by the sovereign constituent Congress.'' We thus have the treaty upon an indisputably legal basis, binding upon both parties.

We come now to the second phase of the examination of the document from a legal standpoint, namely, a summary of the general questions of international law involved in an acquisition of territory such as this treaty set forth. In a discussion of this kind it is of course natural to expect any number of questions of international jurisprudence to come up, and in fact many do arise; but it is merely those few which are especially concerned in the subject before us that deserve attention. The power to acquire territory in general, and the exercise of that power by the United States in particular; the agents through whom the negotiations may be carried on; and, lastly, the question whether or not the treaty should have specified for the asking of the consent of the inhabitants of the ceded territory; these are the points to be looked over in this connection.

First, as regards the power to acquire territory, but particularly the assertion of that power by the United

[1] Sen. Rep. No. 261, 2d Sess. 41st Cong.

States, which is so manifest in this treaty. The right to cede and acquire territory is one of the most elementary privileges of a sovereign state.[1] A government not fully possessed of sovereign powers has no right to extend its boundaries. The acquisition of new possessions may, therefore, be set down as a prerequisite to complete sovereignty, and wherever that right be deficient the government in question is not a sovereign state. Being in possession of all essentially sovereign powers, the United States holds this right of acquiring territory "over which together with all the inhabitants thereon, it may extend its sovereignty."[2] Most truthfully did Daniel Webster declare to Calhoun that his government has the power "to acquire territory and other property anywhere, and govern it as it pleases."

The methods of such acquisition are various but only one of them need concern us here. The ownership of land asserted by force of arms sufficient to make such ownership a fact, is recognized as legal,[3] nor is a treaty absolutely necessary. It is the custom now, however, in order that there may be no doubt as to the actual sovereignty of the territory involved, to embody the cession in a treaty. In the case before us this embodiment took the form, not of specification of the lands ceded, as was the case in the Treaty of Paris in 1898, but merely of a detailed definition of the boundary line.[4] The possession of the ceded province is dated, not from the treaty, but from the date of the completion of the conquest. "The conquest of California by the * * * United States," declares the Supreme Court, "is regarded as having become complete on the 7th of July, 1846. On that day the government of the United States succeeded to the rights and authorities of the government of Mexico."[5]

[1] Phillimore, *op. cit.* Vol. I, §§ 268-270.
[2] American Ins. Co. *vs.* Canter, 1 Peters, 511.
[3] Phillimore, *op. cit.* Vol. I, § 255.
[4] *Cf.* Article V, Appendix B, pp. 304-305.
[5] Merryman *vs.* Bourne, 9 Wallace, 592.

Let us see now whence comes this power. The court declares it to be "vested by the Constitution in the United States."[1] But with the Treaty of Guadaloupe Hidalgo, as with all other treaties involving the acquisition of territory, there was advanced the protest of its being an infringement upon constitutional right. Though there have been but two bases in the constitution for defending the extension of the boundaries of the United States,[2] nevertheless the Court, Congress, and the Nation, recognizing this as a sovereign state, have declared this right to acquire territory to be an inherent privilege and element of sovereignty.

Regarding the authority which must be back of negotiations the dictates of international law are brief and to the point. Agents who are commissioned to negotiate treaties may not exceed the limits of their instructions or the prescriptions of their full powers. Any agreements which they may enter into beyond their authority —and the whole of Trist's treaty comes under this head —are called sponsions and are valid only when approved by the sponsor's government.[3] It is very fortunate in this regard, that the treaty was not drawn up under the Roman law, still prevalent among some of the nations of Latin origin, by which the nation is bound by its agents' acts. Had the tenth article, for example, been allowed to stand, as would have been the case under such a system of law, the result would have indeed been disastrous. The violation of this article would have inevitably come about, as has been pointed out above,[4] and consequently the whole instrument would have become void by one of the first laws of the intercourse of nations.[5]

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[1] U. S. Lyon et al. *vs.* Huckabee, 16 Wallace, 414.

[2] Art. 1, § 8, Cl. 11. Granting Congress the power to carry on war. Art. II, § 2, Cl. 2. Granting the President and Senate the power to make treaties.

[3] Phillimore, Vol. II, p. 74; also Wharton, §§ 130-132.

[4] *Vid. ante,* pp. 270-271.

[5] *Cf.* Phillimore, Vol. III, § 35.

It is necessary to say but a word regarding the question as to whether or not the consent of the inhabitants should have been called for by the treaty, as is many times suggested every time an acquisition of territory is made.[1] From the very beginning of its policy of expansion the United States has never asked this consent, having acted upon the basis that it had the right to acquire the land in question if the ceding power had the right to give it. The inhabitants of Louisiana were the subjects of Spain, France, and the United States all in the course of one month without their consent being asked. Indirectly, however, the government has always consulted the wishes of the population of the ceded lands so as not to force the condition of citizenship upon them. Article VIII provides for this in the instrument under examination, and all previous and subsequent documents of the same nature have a similar provision.

We have, thus, a brief review of the questions of international law concerned in the treaty, and we turn now to an inquiry into the law in the matter of boundary extension as evidenced in the document. A question of this character, involving the boundaries of a nation, is, as the Court has well said, "more a political than a legal question."[2] in the discussion of which the pronounced will of the legislature is entitled to due respect from the judiciary. But even so, the legal phase of this investigation into boundary extension is by no means a minor one; in fact, in this particular case, the rulings of the court have played an especially important part, and an examination of them is essential to a thorough understanding of the remaining legal questions of the treaty still to be discussed.

It is not the purpose of this particular part of the investigation to tell of the wonderful stretch of land acquired by the treaty,[3] of the hundreds of thousands of

[1] *Cf.* Butler, Vol. I, p. 85, for a review of this subject.
[2] Foster et al. *vs.* Neilson, 2 Peters, 253, 309.
[3] *Cf.* Map, Appendix D, p. 313.

square miles of territory which, for the most part, is but now beginning to show its true worth, nor of the paramount position which the control of ten degrees of sea coast and plenty of good harbors on the Pacific has given the United States. It is only the movement of the boundaries, in and of itself—the legal aspect of this movement—and not the extent of territory which may be affected —the mere question of the changing of boundaries, in other words, is what concerns us here. The main point brought out by an examination of the Court decisions is that the boundaries of the United States are fixed solely by the political branches of the government (*i.e.,* Congress and the executive); this they may accomplish through the treaty-making power, which was the means resorted to in this case, or by legislation, or by any one of several different means. This, then, is the important point to remember in this connection: the extent of the boundaries of the United States and the limits of the exercise of its sovereignty depend, not upon the conquest of its arms, but upon the action of its political authorities. The best expression of this element of political power is found in the opinions and judgments of the judiciary and it is therefore included rather under what we have taken the liberty to call the law of the treaty, than under the subsequent heading of the politics of the treaty. For it is from the Supreme Court that we get the statement that "the boundaries of the United States as they existed when war was declared against Mexico were not extended by the conquest; * * * they remained unchanged, and every place which was out of the limits of the United States, as previously established by the political authorities of the government, was still foreign."[1] According to this, then, the Treaty of Guadaloupe Hidalgo, being the expression of the will of these "political authori-

[1] Fleming et al. *vs.* Page, 9 Howard, 616; *cf.* also U. S. *vs.* Rice. 4 Wheaton (U.S.), 246.

ties of the government,'' was the thing that legally fixed the boundary of the country. Conquest, as one of the simplest laws of nations, constitutes a valid title, as has been set forth above;[1] and so the territory held by conquest, as regarded by all other nations, was a part of the United States belonging to it ''as exclusively as any territory within our established boundaries, but yet it was not a part of the Union,''[2] for it was not within the jurisdiction of the laws and usages of nations to fix the relations which should exist between a sovereign state and such places as it might hold by right of conquest. That was reserved for the political departments of the government to determine, and they did so through the treaty-making power. In the treaty under discussion, the fixing of the boundaries was readily disposed of by the simple plan of designating the northern boundary of Mexico. The reason for this is quite plain; the United States being in possession of practically all of the important points of Mexico, including the capital, chief towns and strongholds, according to the law of conquest as supported by the usages of nations, its title to not only Upper California and New Mexico, but the whole republic, was perfected; the question therefore, was, not what provinces should be ceded by Mexico, but *how much should be restored by the United States.*[3] The Treaty of Guadaloupe Hidalgo, is, then, in a strict sense of the word, not a treaty of cession; is makes no pretense at cession; it is a mere treaty of peace wherein the rights of the United States as secured by conquest are recognized and acknowledged by Mexico.[4] The title of the United States, as said before, commences and is dated from the completion of the conquest,—its jurisdiction is considered established from that

[1] *Vid. ante.* p. 275.

[2] Fleming et al. *vs.* Page, 9 Howard, 603 *et seq.,* 615.

[3] *Cf.* Magoon's Reports, p. 41.

[4] *Ibid.,* p. 277.

time on, and into this matter the treaty did not enter.[1] In a word, by way of summary, the instrument in question is, strictly speaking, not one of cession of various lands to the United States; it is merely one of peace—a reiteration of rights already secured by conquest; but the business of fixing the boundaries of the republic, being reserved to the political divisions of the government, was accomplished by them through this document.

We come now to the fourth of the divisions or phases into which the discussion of the legal aspect of the treaty has been divided, namely, the question as to the force of the Constitutional and Federal laws over the ceded territory,—in other words, the inter-relation of the treaty, the Constitution and the fundamental law of the United States, with reference to the newly acquired lands.

An examination of the opinions and the various expressions of the leaders of the administration with regard to the discussion as to the laws in force over the territory, is perhaps the best preliminary step necessary to an understanding of the question. By the conclusion of the war through the treaty, the military government which had, throughout the hostilities, regulated virtually all the affairs of the territory occupied, ceased to derive any further power from that law of war which justified its existence. "But," Secretary Buchanan asks,[2] "was there for this reason no government in California" after the ratification of the treaty? Yes; the termination of the war left an existing government—*de facto* it is true, but demanded by the very law of necessity—a government which was to exist until definite provision by Congress for territorial administration should come about. "But above all," he declares,[3] "the

[1] *Cf.* Leitensdorfer *vs.* Webb, 20 Howard 176, for a recognition by the Supreme Court of this jurisdiction; it here sustains the establishment of courts of justice directly after the conquest, by the military government in New Mexico.

[2] Letter of Oct. 7, 1848—House Ex. Doc. No. 1, 2d Sess. 30th Cong.

[3] *Ibid.*

Constitution of the United States, * * * was extended over California on the 30th of May, 1848, the day on which our late treaty with Mexico was finally consummated." This statement is to be borne in mind—the ratification of the treaty extended the Constitution in force over the territory annexed; we shall have occasion to refer to it shortly. Turning to another expression of the attitude of various members of the administration upon this subject, we have Secretary of the Treasury Walker's circular to "collectors and other officers of the customs," of the same date as the above—October 7, 1848. By the treaty with Mexico he declares, California was annexed to the United States "and the Constitution is extended over that territory and is in full force throughout its limits;" another straightforward declaration on the part of the administration of its stand upon this question of the inter-relation of treaty and Constitution. These are but two examples chosen as typical from a number of similar ones.[1]

Let us stop right here and examine the radical difference between the statements given above and the character of all declarations of Congress, of the Court (with one exception)[2] or of the executive upon the same question before or since that time, respecting the relative position of this treaty, or similar ones, and the Constitution and Federal law. Upon this question the rulings of the court are perfectly plain, straight to the point, and directly opposed to the position taken by the administration with regard to the Treaty of Guadaloupe Hidalgo and the territory mentioned therein. It declares two propositions to be established beyond controversy: (1) This country, as a sovereign nation, may acquire and govern new territory; this has already been dis-

[1] Others are letters of instructions from Sec'y of War Marcy to Col. Mason in California, also various communications of other Cabinet members as well as the President. *Cf.* Ex. Doc. No. 1, 2d Sess. 30th Cong.; also Magoon's Reports, p. 102.

[2] This lone exception is Mr. Chief Justice Taney's famous decision in Dred Scott *vs.* Sandford, 19 Howard, 393.

cussed[1] and will not concern us here. (2) "The government of territory acquired and held by the United States belongs primarily to Congress and secondarily to such agencies as Congress may establish for that purpose."[2] "These two propositions are so elementary," the court later declared,[3] "they so necessarily follow from the condition of things arising upon the acquisition of new territory that they need no argument to support them. They are self-evident." It is hardly possible to distort or misread such a statement as that; the meaning is perfectly clear; a misinterpretation is practically impossible. Numerous other cases[4] might be cited wherein the judgment is the same, giving Congress or its creations the sole power over all newly acquired territory. Not once does the Constitution enter into consideration; not once is the interpretation made, which we find in the case of the Polk administration, that any treaty confirming a cession immediately upon its ratification, brought the Constitution into power over the new lands.[5]

A word as to the arguments advanced by the administration in defending the theory that the treaty brought the ceded territory under the Federal law. Secretary Walker, in the circular mentioned above, declares by way of a proof of this doctrine, that Congress "by several enactments subsequently to the ratification of the treaty, has distinctly recognized California as a part of the Union;" these enactments, he maintained, were but a proof of the appreciation of Congress of the fact that the instrument under discussion put the cession under the Constitution. True it is

[1] *Vid. ante.*, pp. 274-275.

[2] Snow *vs.* United States, 18 Wallace, 319-320.

[3] Mormon Church *vs.* United States, 136 U. S., 43.

[4] *E.g.* Snow *vs.* United States, 18 Wallace, 317, 320; Murphy *vs.* Ramsey, 114 U. S., 15, 44; United States *vs.* Gratist et al., 14 Peters, 524, 527.

[5] This is true, excepting, of course, the Dred Scott decision already referred to, which may be disregarded since it has long since been ignored and over-ruled by both Court and Congress.

that the authorities in California enforced the tariff and navigation laws of the United States; true, also, that the Supreme Court sustained their action.[1] But this was done, not because the Constitution, by virtue of the treaty, was in force over the territory, as Secretary Walker and the rest of the administration would have us believe, but because Congress by its enactments[2] had extended the boundaries of the United States over the new territory. Nor did Congress itself believe with the executive department that, by act of the treaty, the laws of the country extended over California or any other part of the cession; for if it *did* concur in such an opinion, why should it enact a statute "to extend the revenue laws of the United States over the territory and waters of Upper California?"[3] Why did the very first Congress that met see fit to take similar action by extending the provisions of some previous revenue measures over Rhode Island and North Carolina after those states had ratified the already adopted Constitution?[4] By way of confirmation of a state of things already brought about—in the latter case by the ratification of the Constitution and in the former by the signing of the treaty? No; the court as quoted above, has given the reason: "The government of territory acquired and held by the United States belongs primarily to Congress and secondly to such agencies as Congress may establish for that purpose;"—the Constitution is absolutely without power in such matters; congressional action alone is backed by the proper authority in cases of this sort. How, then, could this treaty—the product, it must be remembered, not of Congress, but of the treaty-making power, an entirely different institution in the government—how could this document, in the face of what has just been said, enforce the Constitution and the laws of the United States

[1] Cross et al. *vs.* Harrison, 16 Howard 164, 189-197.

[2] Such as that of Aug. 12, 1848, providing for post roads—9 U. S. Stats., chap. 166, p. 301; or that of Aug. 14, 1848, regarding civil and diplomatic expenses—9 U. S. Stats., chap. 175, p. 320.

[3] 9 U. S. Stats., chap. 112, p. 400.

[4] 1 U. S. Stats., pp. 99, 126.

over the new territory? Such would indeed be a manifest infringement upon the privileges and authority of Congress.

Closely associated with this question of the relation between the Constitution and the treaty, is the one concerned with the status and government of the new territory and its inhabitants as influenced by the instrument under discussion; to this, the fifth phase of the "law of the treaty," we now come. The investigation of this particular point may best be divided under three convenient heads: first, the property—private, municipal, and government—in the ceded territory and the effect of the treaty and the cession upon it; second, the inhabitants, their allegiance and political rights, and the influence of the change of conditions upon their status; and lastly, the government existing in the new lands at the time of the cession, and the effect of the transfer of ownership, as enforced by the treaty, upon it.

First, then, as to the effects of the treaty upon the status of property of all different kinds—private, municipal and government. "Their (*i.e.*, the inhabitants') right of property remained undisturbed," says the court.[1] When the formal transfer of the lands in question was made through the treaty, that instrument did nothing to alter the rights of holding property or the relations of the inhabitants to one another. We have a strong proof of the maintenance of these property-holding relations in the well-taken argument advanced in Congress by those opposed to the introduction of slavery into the new territory. The pro-slavery adherents attempted to give slavery a legal basis in the cession by a construction of such acts as the Missouri Compromise. This was well met by the opposition who argued that, since by the laws of Mexico slavery had been prohibited in the new territory, and since, as the Supreme Court says, as quoted above, "rights of property remained undisturbed" in the ceded lands, therefore it would require

[1] Leitendorfer *vs.* Webb, 20 Howard, 177.

an act of Congress to overturn this "undisturbed" condition of the laws of property by specifically legislating slavery into the territory in question.[1] The laws regulating the relations of the inhabitants to each other and to their belongings were to remain unchanged, unaffected by the treaty, unless Congress legislated otherwise. We have here an excellent proof of the stability which the law of private property maintained throughout the changing of the boundaries as set forth in the treaty.

With public lands, however, the case was different; for with the transfer of sovereignty over the territories came the surrender by the ceding nation of every vestige of its sovereignty before it withdrew. The holding of public lands being an attribute of the sovereign power in the country, it follows as a consequence so natural that it scarcely merits attention, that these lands, along with the other elements of governing authority, reverted to the new ruling government.

On the other hand, with regard to the lands and properties of the pueblos or municipalities, be it said that they did not revert to the central government to be subject to redistribution or even entire retention by that authority, as one might be led to expect. On the contrary, we find the Supreme Court of California maintaining that such was not the effect of the conquest, that these municipal lands did not become a part of the national domain by the cession which was given formal expression in the Treaty of Guadaloupe Hidalgo, but that they continued to be the public property of the municipalities as before the war, unless legislative measures to the contrary were passed by the state.[2] The rulings of the State Court on this point—

[1] *Cf.* on this point Butler *op. cit.* Vol. II, p. 166. Additional support and defense of the sacredness of the rights of private property from interference or being affected by the transfer is found in American Ins. Co. *vs.* Canter, 1 Peters, 511.

[2] Hart *vs.* Burnett, 15, California, 530; White *vs.* Moses, 21 California, 34; *cf.* also Magoon's "Reports," pp. 383, 464-465.

namely, that the treaty had no effect whatever upon the pueblo or municipal lands—was later referred to and followed by the United States Supreme Court.[1]

Let us turn now to the consideration of the effects of the document upon the political status of the inhabitants—their allegiance and their rights as citizens. The treaty, as has been said, did not affect the laws of private property or change the ownership of municipal lands; but what it *did* do, besides to confer the public lands upon the new sovereign, was to give it the right to claim, as another element of its sovereignty in the ceded territory, the allegiance of all who remained therein with the intention of becoming citizens.[2] As regards the status of their political rights, the treaty itself makes some provisions; in Article IX we find that those Mexicans who, by complying with certain prescribed conditions, showed their intentions to become citizens of the United States, were to be "incorporated into the Union and admitted" to enjoy the rights of citizens, "at the proper time (to be judged of by the Congress of the United States)."[3] Save for guarantees given them in the treaty the inhabitants must submit to "such conditions as the new master shall impose."[4] As can be seen by an examination of the stipulation from the document in question which is quoted above, it is very apparent that all the inhabitants by the act of cession were not forthwith endowed with citizenship; their fitness for that position and the expediency of conferring it upon them were matters "to be judged of by Congress." The guarantees extended by the United States in the treaty were, of course, binding upon this government, as Mr. Justice Story has ably pointed out;[5] but so far as citizenship itself was concerned,

[1] Merryman *vs.* Bourne, 9 Wallace, 592.

[2] Leitensdorfer *vs.* Webb, 20 Howard, p. 177; on the general principles of this point see Phillimore, Vol. III, pp. 576-596; also Wharton, *op. cit.*, Vol. I, Sects. 3-5.

[3] *Cf.* Appendix B, p. 306.

[4] American Ins. Co. *vs.* Canter, 1 Peters, 541.

[5] "Commentaries on the Constitution." Vol. II, p. 203.

there the treaty merely held out the hope; it left the actual award to the discretion of Congress.

Before leaving this subject of the status of affairs in general in the ceded territory as affected by the treaty, we might include a statement of the condition of the government of the lands in question and look for the effects of the treaty there, if there be any. At the time of the signing of that document the existing government in the lands concerned was purely military; it had originated in the exercise of a belligerent right recognized by the laws and usages of nations; it was the creation of the President acting, through the officers in the field, as commander-in-chief. The question is now, when peace was declared was that existing government forthwith, by the signing of the treaty, demolished? Such was the opinion of President Polk, who declared it merely a government whose existence was compelled "by the laws of nations and of war" and it would "cease on the conclusion of a treaty of peace."[1] It being the work of the President through the military authorities, he might have destroyed it by withdrawing them. Congress could have put an end to it, but that was not done. "The right inference to be drawn from the inaction of both is, that it was meant to be continued until it had been legislatively changed. No presumption of a contrary intention can be made."[2] This government did *not* cease as a matter of course when the territory was ceded, "or as a necessary consequence of the restoration of peace."[3] "The great law of necessity," as Buchanan called it, was largely responsible for its continuance. The President seems to have misunderstood the difference between government by the code of war and government through military occupation, upon which the court has laid considerable stress in the case cited above. What the treaty under discussion *did* do was, not

[1] House Ex. Doc. No. 70, 1st Sess. 30th Cong. For a similar assertion on this part see House Ex. Doc. No. 69, 1st Sess. 30th Cong.; also House Ex. Doc. No. 1, p. 12, 2d Sess. 30th Cong.

[2] Cross et al. *vs.* Harrison, 16 Howard, 207.

[3] This is later supported and followed in Dow *vs.* Johnson, 100 U. S., 168.

to abolish the government existing in the ceded territory at the time of its signature, but merely to strengthen the title of the United States to lands already secured by conquest, and to make those lands no longer a seat of war. The instrument did not affect the existing government, military as it was, as Polk would have us believe; on the contrary, as has been already pointed out and as the court has since then often affirmed, it only put an end to the condition of actual war in the country, and enforced and gave final basis to the title of the United States to the lands involved.

In brief, we may summarize the effects of the making of the treaty upon the property, the inhabitants and the then existing government in the cession, thus: first, both private and municipal property remained unaffected by the transfer of sovereignty, whereas the public lands, since the possession of them is an attribute of the sovereign power, reverted to the new owner; second, the allegiance of the inhabitants, like the government lands, became due the new sovereign state, and their political rights in so far as the treaty did not already determine them, were fixed according to the will of the government now vested with the supreme power over them; and third, the existing government was not discontinued immediately upon the making of the treaty through any power of that instrument.

The sixth and last phase of the making of the treaty in its legal aspect, which needs no considerable attention, is that concerned with the inquiry as to what is the actual power in the United States government vested with the control of the great stretch of territory the cession of which was confirmed by this instrument. What was that institution, or power, or authority, within the machinery of the state, which, immediately upon the signing of the treaty, took charge of the new acquisition?[1] There has often been ad-

[1] It was quite possible to have classified this inquiry under one of the groups immediately preceding; it was, however, reserved for separate discussion because it seemed, to a certain extent, to summarize the others, or rather, to cover the essential point in back of the most of them.

vanced the argument that the President and the Senate, acting through their treaty-making powers, can establish the relations which are to exist between the Federal government and foreign territory, the acquisition of which has been formally embodied in a treaty of their making. In other words, to apply this to the case at hand, the treaty-making department of our government, by inserting in the Treaty of Guadaloupe such stipulations as it saw fit, could regulate the relation to exist between the national state and its new acquisition. This theory is doing nothing more nor less than vesting in the President and the upper house, powers which in a monarchy belong to the king and the king's council. Under all governments and throughout all times it is the sovereign that determines the status or even the making of additions to the land, the conditions which shall be imposed upon any who are to participate in the government of which it is the head, or their relations to the rest of the realm. In a monarchy, ideally conceived, the sovereign power is vested in the king and his council; but in a republic, ideally conceived, the people constitute the sovereign. So too, in the case before us—the President and the Senate are not endowed with sovereign power, but the people are, and such being the case, it is they—the people—who, through their representatives, regulate the status of newly acquired territories. The Treaty of Guadaloupe Hidalgo, as the expression of the will of the treaty-making power of the United States, could not dictate to the sovereign power in such matters as the regulation of the position to be occupied in the nation by the newly acquired territory and its inhabitants, or on any of the other questions suggested above, the settlement of which is reserved to the people, as the sovereign, through their representatives, namely, Congress. Though in this particular case it did not exercise it, that department of the government has the right to supersede or displace any treaty or any part of a treaty by legislation. The people, as the sovereign power of the United States, acting by means of Congress, by allowing the

Treaty of Guadaloupe Hidalgo to stand as ratified on May 30th, 1848, gave their tacit consent thereto, and it is upon this consent, and not upon the will of the treaty-making power, as expressed in that instrument, that its force and legality depends.

We have now come to the second subject or phase of the discussion of the two into which Part II was divided, namely, the politics or, perhaps more correctly, the policy lying back of the treaty; thus far we have been concerned only with a chronicle of the bare historical facts and with the stereotyped legal aspects of the subject; it shall be our endeavor before concluding this essay to examine those subtle points of statecraft, the lines of policy, of political theory underlying the making of the treaty and of which that instrument was the embodiment, the outgrowth. And then, before we close, in connection with this line of thought, some little consideration will be given to a movement, which, had it not been for the making of this instrument, would at one stroke have changed the map and probably the future of North America.

In the entire history of the United States there are very few opportunities of getting an inner light upon the motives and ideas actually regulating the policy of the government. But one of these few is presented in the diary of President Polk.[1] Through it we can get an insight into his ability, the firmness of his policy and purpose, and the independent and steadfast—one might almost say stubborn—manner in which he carried it out. Though far outshone by the more famous statesmen of his time, he was by no means led by them, for, even after making all proper allowances for the fact that the narrative is his own personal account, nevertheless the fact stands out beyond question that it was he who formed and followed out the policy of the administration—it was he who, as a climax to one of the most important periods in

[1] *Cf.* Appendix C, p. 309 *et seq.*

American history, when it rested with him alone to change the face of the continent, gave his sanction to the Treaty of Guadaloupe Hidalgo and thus started it on its way to ratification. Honest and fixed in his principles, he worked for what he firmly believed to be the ultimate good of the country; "he toiled and despoiled for the glory of the American Union."

The particular element of his policy in which we are concerned is his management of the annexation of Texas, by a mixture of diplomacy and bloodshed, so as to secure from Mexico, through the treaty before us, a stretch of territory the extent of which was not contemplated even by his own supporters.

Much has been said and written of the acquisition of California and New Mexico as a purely pro-slavery movement. It has often been declared to be "the judgment of history"[1] that this addition was made "for the purpose of strengthening the institution of slavery." Von Holst refers to the President as "der Sklavenhalter Polk"[2] and suggests that slavery extension was at the bottom of the war and the treaty which closed it. Such might well have been, and probably was, the incentive to almost all the support which the extension of the boundaries had amongst the people and statesmen of the time. But such was *not* the incentive which moved Polk in the formation of his policy and the consequent action of the administration in endorsing the treaty (for it must be remembered that the President's plans were the administration's plans; as was pointed out before, he was led by no one in the formation of his policy). The President realized, as the majority of the defenders of his action in making the acquisition did not, that the environments of California and New Mexico were most unfavorable for the introduction of slavery. "From the nature of the climate and products in much the larger

[1] Foster, *op. cit.*, p. 321.

[2] *Op. cit.*, Vol. II, p. 272.

portion of it, it (slavery) could never exist and in the remainder the probabilities are it would not.'"[1] In none of his private papers or correspondence, or in his diary, do we find any basis for an argument justifying the ascription of Polk's action with regard to the acquisition of territory to this slavery extension motive which influenced so many of his supporters. It must be remembered that it was the President and not his adherents, who set the stamp of legality upon the treaty[2] and thus made possible the retention of those lands already won by conquest. We must look elsewhere for the cause of the action taken by the executive.

Underlying all the expressions of his opinion upon the subject we find the one ruling motive of expansion—expansion in the simplest, complete sense of the word; he felt it incumbent upon himself to advance the flag, to broaden the extent of the sovereignty of the United States, to acquire territory. That is the motive out of which sprang the so-called Mexican policy of the administration, which found its culmination in the Treaty of Guadaloupe Hidalgo. This policy in brief was to support the pretentious claims of the revolutionists in Texas, whose annexation was the burning question at the time of his coming to office, and then on becoming involved in strained relations or even war with Mexico, to bring about by any means whatever—justifiable or otherwise—the acquisition of a large part of the lands of that republic.[3] And such indeed was the result. It is, then, to this spirit of expansion, expansion for its own sake,

[1] Message to Congress, Dec. 5, 1848—Ex. Doc. No. 1, p. 14, 2d Sess. 30th Cong.

[2] *Vid. ante.*, pp. 273-274.

[3] It has not been deemed advisable to insert in the text the many assertions of the President upon which the above argument is based; a full list of them would include practically all of his writings upon the war; following are a few of them: Benton's "Debates," Vol. XVI, p. 215; Richardson's "Messages," Vol. IV, p. 587; *ibid.* p. 494; House Ex. Doc. No. 70, 1st Sess. 30th Cong.; House Ex. Doc. No. 4, p. 22, 2d Sess. 29th Cong. All through the diary there is the constant suggestion of this eagerness for expansion, *cf.* Appendix C, entries of Sept. 4 and 7, Nov. 9, 1847, and Feb. 21, 1848, pp. 309-312 inclusive.

which was so evident as the backbone of Polk's Mexican policy, and not to the sentiment for the extension of slavery which moved so many to support his policy,—it is to the possession by the executive of that powerful love for "lands, more lands" that we owe the great bound taken by the limits of the country as given legal voice to in the treaty before us for discussion.

But, it may be asked, what prevented this expansion policy being carried to an extreme? What forbade the extension of the boundary line so as to include not only California and New Mexico, but some of the contiguous provinces as well,—why not the whole of Mexico? Even the suggestion of such an inquiry as this might bring a smile to some, but we soon shall see the necessity of the serious consideration of this question, for behind it lies the secret the real importance of the treaty.

Some of the more recent writers have commented upon the marked similarity existing between the Mexican and the Spanish wars—the resemblance not only in general aspects but in detail as well. But in following out the comparison there arises this natural question:—since, by the victory at Manila Bay the United States felt it incumbent upon itself to retain the Philippines, how did it happen that the Rio Grande was fixed as the boundary in 1848, and not the Isthmus of Tehuantepec? The country was completely at the mercy of the conqueror—far more so than the islands taken in 1898; central government it had none; furthermore it was contiguous territory. Why was it, then, that the whole of Mexico did not become a part of its more powerful neighbor by a very simple change in the treaty which closed the war?

Before answering this, let us go back a bit. The news of the steadily increasing list of triumphs of American arms, climaxed by the capture of the City of Mexico itself in September, gave rise to a very natural feeling among the American people, namely, the sentiment that the de-

mands for indemnity be increased; until finally there evolved from this an active agitation to incorporate all of Mexico into the Union. As time went on the movement grew in strength; nor were its supporters confined to any particular section of the country or party. The many advocates of slavery greeted it with eagerness as an opportunity to enlarge their institution; others of the same class were against it. The movement found its strongest support amongst those who were indifferent or even opposed to slavery. Secretary Walker, who was opposed to slavery though a southerner by adoption, became the supporter of the "all-of-Mexico" movement in the cabinet.[1] The newspapers took up the plan with vigor; the "National Era," one of the chief anti-slavery organs in the country, advocated "the admission of all the individual Mexican states as fast as they should apply for it."[2] The movement was already beginning to take on a definite shape. Its acceptance was looked upon as inevitable not only at home but abroad as well. Bancroft wrote to Buchanan from London that "people are beginning to say that it would be a blessing to the world if the United States would assume the tutelage of Mexico."[3] Still it grew and grew; it was already becoming formidable;[4] all that was necessary to gain its object was a little time. Suddenly, from a quarter where it least awaited attack, it received its *coup de grâce.* By depriving it of that essential extention of time, the making of the Treaty of Guadaloupe Hidalgo gave this "all-of-Mexico" movement its finishing stroke, and the Rio Grande, not Tehuantepec, was to be the boundary.

[1] *Cf.* Appendix C, p. 311.

[2] "National Era" of Aug. 3, 1847, and Feb. 3, 1848; *cf.* Bourne *op. cit.*, p. 236.

[3] G. T. Curtis' "Buchanan," Vol. I, p. 576. We may note here that the movement was receiving support in Mexico as well—the Puros (war) party, by urging the injudicious continuation of the war, hoped to force the United States into keeping the whole country, —*cf.* Ripley *op. cit.* Vol. II, p. 526.

[4] Von Holst says, regarding this movement, "Die Bewegung war stark genug, um die ernstesten Besorgnisse zu rechtfertigen." Vol. II, p. 274.

It is only by recent writers that the gravity of this movement and the importance of the fact that it was crushed are being realized. The arguments advanced as to the agency or force to which the credit of checking and destroying it are due are various. The realization that every expansion meant another slavery crisis; the fact that the power in Congress was in the hands of the Whigs, a strictly anti-expansionist party, who had been elected over a year before this and therefore did not represent public opinion as it was then: these are but two of a number of theories advanced to give basis to the failure of the movement. And yet, neither of them cover the true reason, which, it seems to us, is two-fold in its nature: first, the sudden appearance upon the field of the treaty, as the result of Trist's disobedience of orders, and then, second, (though this is in a way dependent upon the first) the opposition of Polk to any such movement (for, expansionist though he was, he believed in moderation)[1]— these two resulted in the ratification of the treaty and the effectual extermination of what portended to be, indeed, in all probability, what would have been one of the most sweeping and lasting movements in its effects, known to American, if not world history.

At the very outset of this investigation it was set down as the object in view to "inquire into and point out the relationship existing between this vitally important document and the trend of the powerful undercurrent, the exact nature of which was to be determined." This "powerful undercurrent" with regard to which the treaty was to play such an important part was simply that onsweeping movement for the acquisition of all of Mexico— the movement which, had it attained its end, would have

[1] *Cf.* Appendix C, p. 311, entry for Nov. 23, 1847. We wish also to note here that this essay was written before the appearance of the article on "The Treaty of Guadalupe-Hidalgo," by Mr. Jesse S. Reeves in the *American Historical Review*, V, 309-325, January, 1905, in which will be found an interesting discussion of this point and of the subject as a whole.

wrought havoc with subsequent American history. This movement was that one of the "evolutionary processes" (which go to make up history) with which we were concerned in this work. The instrument in question as the outcome of Trist's disobedience and Polk's diplomacy and firmness in a policy of expansion (though it be only a moderate one), acted as the direct and immediate cause of the failure of this "all-of-Mexico" movement—and therein lies its significance, therein is seen the effect of its coming upon history. That in a word, sets forth the consequence of the *making* of the Treaty of Guadaloupe Hidalgo; the fact that it was *made* at the time and under the circumstances and the position it took with regard to the movement then in progress; upon these rests its position in American history as a document of the most fundamental importance. Extraordinary in its origin, far reaching and penetrating in its effects, by virtue, not only of the results which it accomplishes, but of the condition of affairs which it avoided, it stands as a landmark in the history of American diplomacy.

APPENDICES.

APPENDIX A.

Extracts from official correspondence with regard to the negotiating of a treaty of peace or settlement with Mexico, 1845-1848.

(1) Secretary of State Buchanan to Mr. Slidell. Nov. 10, 1845.

(2) Secretary Buchanan to Mr. Trist. Apr. 15, 1847.

(3) Secretary Buchanan to Mr. Trist. Oct. 6, 1847.

(4) Mr. Trist to Secretary Buchanan. Nov. 27, 1847.

(5) Mr. Trist to a "confidential friend at Queretaro." Dec. 4, 1847.

(6) Secretary Buchanan to the Mexican Minister of Foreign Relations. Mar. 18, 1848.

(1) Secretary Buchanan to Mr. Slidell. Nov. 10, 1845.[1]

"The question of boundary may, * * * be adjusted in such a manner between the two republics as to cast the burden of the debt due to American claimants upon their own government, whilst it will do no injury to Mexico. The fact is but too well known to the world, that the Mexican government is not now in a condition to satisfy these claims by the payment of money.

* * * * * * *

[1] House Ex. Doc. No. 69, pp. 33-43, 1st Sess. 30th Cong. By this letter Mr. Slidell was appointed to act as commissioner to Mexico to ameliorate the then already strained relations between the two republics.

"Mexico would part with a remote and detached province (by ceding New Mexico), the possession of which can never be advantageous to her; and she would be relieved from the trouble and expense of defending its inhabitants against the Indians. But the President desires to deal liberally by Mexico. You are therefore authorized to assume the payment of all the just claims of our citizens against Mexico; and, in addition, to pay five millions of dollars, in case the Mexican government shall agree to establish the boundary between the two countries from the mouth of the Rio Grande, up the principal stream to the point where it touches the line of New Mexico; thence west of the river, along the exterior line of that province, so as to include the whole within the United States, until it again intersects the river; thence up the principal stream of the same to its source, and thence due north, until it intersects the 42d degree of north latitude.[1]

"There is another subject of vast importance to the United States and will demand your particular attention. From information possessed by this department it is to be seriously apprehended that both Great Britain and France have designs upon California. * * * Whilst this government does not intend to interfere between Mexico and California, it would vigorously interpose to prevent the latter from becoming either a British or a French colony. * * * The government of California is now but nominally dependent upon Mexico; and it is more than doubtful whether her authority will ever be reinstated. Under these circumstances, it is the desire of the President that you shall use your best efforts to obtain a cession of that province from Mexico to the United States. * * * Money would be no object when compared with the value of the acquisition."

[1] *Cf.* Map, Appendix D, p. 313.

(2) Secretary Buchanan to Mr. Trist. Apr. 15, 1847.[1]

"* * * Without any certain information, however, as to its disposition (*i.e.,* that of the Mexican government to conclude a treaty), the President would not feel justified in appointing public commissioners for this purpose, and inviting it to do the same. After so many overtures rejected by Mexico, this course might not only subject the United States to the indignity of another refusal, but might, in the end, prove prejudicial to the cause of peace. The Mexican government might thus be encouraged in the mistaken opinion, which it probably already entertains, respecting the motives which have actuated the President in his repeated efforts to terminate the war.

"He deems it proper, notwithstanding, to send to the headquarters of the army a confidential agent, fully acquainted with the views of this government, and clothed with full powers to conclude a treaty of peace with the Mexican government, should it be so inclined. In this manner he will be enabled to take advantage at the propitious moment, of any favorable circumstances which might dispose that government to peace.

* * * * * * *

"Whilst it is of the greatest importance to the United States to extend their boundaries over Lower California, as well as New Mexico and Upper California, you are not to consider this as a *sine qua non* to the conclusion of a treaty. You will, therefore, not break off negotiations if New Mexico and Upper California can alone be acquired. In that event, however, you will not stipulate to pay more than twenty millions of dollars for these two provinces without the right of passage and transit across the Isthmus of Tehuantepec.

[1] Sen. Ex. Doc. No. 52, pp. 81-85, 1st Sess. 30th Cong. Also Sen. Report No. 261, pp. 4-6, 2d Sess. 41st Cong. Mr. Trist is by this letter given the appointment of confidential peace commissioner to Mexico.

"The extension of our boundaries over New Mexico and Upper California, for a sum not to exceed twenty millions of dollars is to be considered a *sine qua non* of any treaty. You can modify, change, or omit the other terms of the projet if needful, but not so as to interfere with this ultimatum."

(3) Secretary Buchanan to Mr. Trist. Oct. 6, 1847.[1]

* * * * * * *

"On the 2d instant, there was received at this department from Vera Cruz, a printed document in Spanish, which purports to give a history in detail of the origin, progress, and unsuccessful termination of your negotiations with the Mexican commissioners.

* * * * * * *

"Your original instructions were formed in the spirit of forbearance and moderation. * * * The terms * * to which you were authorized to accede, were of the most liberal character, considering our just claims on Mexico, and our success in the war. New Mexico, the Californias, several of the northern states and most of the important ports of Mexico, were then in our possession; and yet we were at that time willing freely to surrender most of these conquests, and even to make an ample compensation for those which we retained.

"Circumstances have entirely changed since the date of your original instructions. A vast amount of treasure has since been expended; and, what is of infinitely more value, the lives of a great number of our most valuable citizens have been sacrificed in the prosecution of the war.

"* * * The Mexican government have not only rejected your liberal offers, but have insulted our country by proposing terms the acceptance of which would degrade us in the eyes of the world. * * * They must attribute our liberality to fear, or they must take courage from our

[1] House Ex. Doc. No. 69, pp. 54-56, 1st Sess. 30th Cong. This letter recalled Mr. Trist and annulled his commission.

supposed political divisions. Some such cause is necessary to account for their strange infatuation. In this state of affairs, the President, believing that your continued presence with the army can be productive of no good, but may do much harm by encouraging the delusive hopes and false impressions of the Mexicans, has directed me to recall you from your mission, and to instruct you to return to the United States by the first safe opportunity. He has determined not to make another offer to treat with the Mexican government, though he will be always ready to receive and consider their proposals. They must now first sue for peace.

* * * * * * *

"Should you have concluded a treaty before this dispatch shall reach you, which is not anticipated, you will bring this treaty with you to the United States, for the consideration of the President; but should you upon its arrival be actually engaged in negotiations with Mexican commissioners, these must be immediately suspended: but you will inform them that the terms which they may have proposed, will be promptly submitted to the President on your return. You are not to delay your departure, however, awaiting the communication of any terms from these commissioners, for the purpose of bringing them to the United States."

(4) Mr. Trist to Secretary Buchanan. Nov. 27, 1847.[1]

* * * * * * *

"I knew, and I felt, that upon my own decision depended, according to every human probability, the early cessation of the war, or its indefinite protraction. The alternative presented by the position in which I found myself was, on the one hand, to keep on safe ground so far as I was personally concerned, and destroy the only possible chance for peace; on the other hand, to assume respon-

[1] Sen. Ex. Doc. 52, pp. 96-99, 1st Sess. 30th Cong. Mr. Trist here gives reasons for the extraordinary action which he later took.

sibility, and keep that chance alive, with some prospect—by no means to be despised under such circumstances—that the adoption of our projet might come to pass.

* * * * * * *

"The only *possible* way in which a treaty can be made is, to have the work done on the spot; negotiation and ratification to take place at one dash. The complexion of the new Congress, which is to meet at Queretaro on the 8th of January (1848) is highly favorable. This will be the last chance for a treaty. I would recommend, therefore, the immediate appointment of a commission on our part."

(5) Mr. Trist to a "confidential friend at Queretaro." Dec. 4, 1847.[1]

"I should not now make the offer (to negotiate after being recalled) but for my clear and perfect conviction on these three points: *First,* that peace is still the desire of my government: *Secondly,* that if the present opportunity be not seized *at once,* all chance for making a treaty *at all* will be lost for an indefinite period—probably forever: *Thirdly,* that this is the utmost point to which the Mexican government can, by any possibility, venture. * * * Knowing as I do, that peace is the earnest wish of both (republics), is it, *can* it be my duty to allow this last chance for peace to be lost, by my conforming to a determination of that government (*i.e.,* his own), taken with reference to a supposed state of things in this country entirely the reverse of that which actually exists? * * * *'Now or never'* is the word; and I need not say to you that this word is uttered in all sincerity."

(6) Secretary Buchanan to the Minister of Foreign Relations of the Mexican Republic. Mar. 18, 1848.[2]

"In recurring to the amendments adopted by the

[1] House Ex. Doc. No. 69, pp. 63-65, 1st Sess. 30th Cong. Written to Mr. Edward Thornton, at that time Secretary of the British Legation at the City of Mexico.

[1] Sen. Ex. Doc. No. 60, pp. 66-72, 1st Sess. 30th Cong.

Senate, it affords me sincere satisfaction to observe that none of the leading features of the treaty have been changed. Neither the delineation of the boundaries between the two republics; nor the consideration to be paid to Mexico for the extension of the boundaries of the United States; * * * nor indeed, any other stipulation of national importance to either of the parties, has been stricken from the treaty by the Senate. * * *

"I ought perhaps here to note a modification in the ninth article, as adopted by the Senate, of the analagous articles of the Louisiana and Florida treaties.[1] Under this modification, the inhabitants of the ceded territories are to be admitted into the Union at 'the proper time (to be judged of by the Congress of the United States).' Congress, under all circumstances and under all treaties, are the sole judges of this proper time; because they, and they alone, under the Federal Constitution, have power to admit new states into the Union. That they will always exercise this power as soon as the condition of the inhabitants of any acquired territory may render it proper cannot be doubted. * * *

"It is truly unaccountable how this (the tenth) article should have found a place in the treaty.[2] * * * If it were adopted it would be a mere nullity on the face of the treaty, and the judges of our courts would be compelled to disregard it. It is our glory that no human power exists in this country which can deprive one individual of his property, without his consent, and transfer it to another. If grantees of lands in Texas, under the Mexican government, possess valid titles, they can maintain their claims before our courts of justice. If they have forfeited their grants by not complying with the conditions on which they were made, it is beyond the power of this government, in any mode of action, to render these titles

[1] Article III of the Treaty of 1803, and Articles V and VI of the Treaty of 1819.

[2] *Cf.* Appendix B, pp. 306-307.

valid, either against Texas or any individual proprietor. To resuscitate such grants, and to allow the grantees the same period after the exchange of the ratification of this treaty, to which they were originally entitled, for the purpose of performing the conditions on which these grants had been made, * * * would work manifest injustice."

APPENDIX B.

Synopsis of the "Treaty of peace, friendship, limits, and settlement between the United States of America and the Mexican republic. Dated at Guadaloupe Hidalgo, February 2, 1848."[1]

Article I. Declaration of "firm and universal peace" between the two republics.

Article II. Provisional suspension of hostilities.

Article III and IV. Provision for the evacuation of Mexican territory by the forces of the United States.

Article V. "The boundary line between the two republics shall commence in the Gulf of Mexico, three leagues from land, opposite the mouth of the Rio Grande, otherwise called Rio Bravo del Norte, or opposite the mouth of its deepest branch, if it should have more than one branch emptying directly into the sea; from thence up the middle of that river, following the deepest channel, where it has more than one, to the point where it strikes the southern boundary of New Mexico; thence westerly, along the whole southern boundary of New Mexico (which runs north of the town called *Paso*) to its western termination; thence northward along the western line of New Mexico, until it intersects the first branch of the River Gila (or if it should not intersect any branch of that river, then to the point on the said line nearest to

[1] The more important articles are given in full; as are also such parts as were amended or stricken out by the United States Senate.

such branch, and thence in a direct line to the same); thence down the middle of the said river, until it empties into the Rio Colorado; thence across the Rio Colorado, following the division line between Upper and Lower California, to the Pacific ocean.''[1]

The rest of this article deals with minor provisions regarding the boundary, including the appointment of a commissioner and surveyor by each of the two governments to ''designate the boundary line with due precision.''

Articles VI and VII. Free navigation of the Gulf of California and the Colorado and Gila Rivers to vessels and citizens of the United States.[2]

Article VIII. Citizenship of such Mexicans as were in the ceded territory at the time of its transfer of ownership. Those who remained ''in the said territory after the expiration of one year from the date of the exchange of ratification of this treaty'' were considered to have elected to become citizens of the United States.

Article IX. Following is the more important part of this article as drawn up by Mr. Trist and the Mexican commissioners at Guadaloupe Hidalgo, February 2, 1848: ''The Mexicans who, in the territories aforesaid, shall not preserve the character of citizens of the Mexican republic, conformably with what is stipulated in the preceeding article, shall be incorporated into the Union of the United States, and be admitted as soon as possible, according to the principles of the Federal Constitution, to the enjoyment of all the rights of citizens of the United States. In the meantime, they shall be maintained and protected in the enjoyment of their liberty, their property, and the civil rights now vested in them according to the Mexican laws. With respect to political rights, their condition shall

[1] *Cf.* Map, Appendix D, p. 313.

[2] These two articles were amended by Article IV of the Treaty of 1853, which concluded the so-called Gadsden Purchase.

be on an equality with that of the inhabitants of Louisiana and the Floridas, when these provinces, by transfer from the French republic and the crown of Spain, became territories of the United States."

The Senate, in its consideration of the treaty, struck out the above paragraph and substituted the following, which was the reading of the article in full as finally adopted:

"The Mexicans who, in the territories aforesaid, shall not preserve the character of citizens of the Mexican republic, conformably with what is stipulated in the preceeding article, shall be incorporated into the Union of the United States and be admitted at the proper time (to be judged of by the Congress of the United States) to the enjoyment of all the rights of citizens of the United States, according to the principles of the Constitution; and in the meantime shall be maintained and protected in the free enjoyment of their liberty and property, and secured in the free exercise of their religion without restriction."[1]

Article X. (This article was stricken out by the Senate. Following is the text of its more important paragraphs):

"All grants of land made by the Mexican government * * * in territories previously appertaining to Mexico, and remaining for the future within the limits of the United States, shall be respected as valid, to the same extent that the same grants would be valid if the said territories had remained within the limits of Mexico. But the grantees of land in Texas * * * who, by reason of the circumstances of the country, since the beginnings of the troubles between Texas and the Mexican government, may have been prevented from fulfilling all the conditions of their grants, shall be under obligation to fulfill the said conditions within the periods limited in the same, respectively; such periods to be now counted from

[1] This was adopted in the Senate by a vote of 42 to 4; Sen. Ex. Doc. No. 52, p. 21, 1st Sess. 30th Cong.

the date of the exchange of ratifications of the treaty; in default of which, the said grants shall not be obligatory upon the State of Texas, in virtue of the stipulations contained in this article.

"The foregoing stipulation in regard to grantees of land in Texas is extended to all grantees of lands in the territories aforesaid, elsewhere than in Texas, put in possession under such grants; and in the default of the fulfilment of the conditions of any such grant, within the new period, which as above stipulated, begins with the day of the exchange of ratifications of this treaty, the same shall be null and void."[1]

Article XI. The United States to exercise strict control over the "Indians and savage tribes" inhabiting the ceded territory. One unimportant change was made in this article before final ratification.[2]

Article XII. The payment to be made by the United States to Mexico. The original of this article contained a cumbersome and somewhat lengthy description of the mode of payment to be followed out. As amended by the Senate and as finally adopted, that part specifying the sum to be paid read thus:

"In consideration of the extension acquired by the boundaries of the United States, as defined in the fifth article of the present treaty, the government of the United States engages to pay to that of the Mexican republic the sum of fifteen millions of dollars."

Following the above comes a brief outline of the mode of payment.

Article XIII. The United States to pay all claims due to Mexico from the conventions of 1839 and 1843.

Articles XIV and XV. The Mexican government exonerated from all just claims of American citizens; the

[1] Stricken out by a vote of 44 to 11; Sen. Ex. Doc. No. 52, p. 18, 1st Sess. 30th Cong.

[2] This article was abrogated by Article II of the Treaty of 1853.

same to be paid by the United States to an amount not exceeding three and one-quarter millions of dollars.

Article XVI. The right to fortify its own territory guaranteed each of the contracting parties.

Article XVII. Revival of the "treaty of amity, commerce, and navigation" of 1831 for a period of eight years following the ratification of the present treaty.

Articles XVIII, XIX, and XX. Arrangement of temporary duties and tariffs.

Article XXI. "If unhappily any disagreement should hereafter arise between the governments of the two republics, * * * the said governments * * * do promise to each other, that they will endeavor in the most sincere and earnest manner, to settle the differences so arising, * * * using for this end mutual representations and pacific negotiations; and if by these means they should not be enabled to come to an agreement, a resort shall not on this account be had to reprisals, aggressions, or hostilities of any kind, by the one republic against the other, until the government of that which deems itself aggrieved, shall have maturely considered * * * whether it would not be better that such difference should be settled by the arbitration of commissioners appointed on each side, or by that of a friendly nation; and should such a course be proposed by either party, it shall be acceded to by the other, unless deemed by it altogether incompatible with the nature of the difference, or the circumstances of the case."

Article XXII. Rules to be observed in case of the possible outbreak of war, concluding with the following paragraph:

"And it is declared that neither the pretense that war dissolves all treaties, nor any other whatever, shall be considered as annulling or suspending the solemn covenant contained in this article * * *."

Article XXIII. Provision for the exchange of ratifica-

tions "in four months from the date of the signature of the present treaty."

In the original treaty as drawn up on February 2, 1848, there was appended an "additional and secret article" which ran thus:

"In view of the possibility that the exchange of the ratifications of this treaty may, by the circumstances in which the Mexican republic is placed, be delayed longer than the term of four months fixed by its twenty-third article for the exchange of ratifications of the same, it is hereby agreed that such delay shall not in any manner, affect the force and validity of this treaty, unless it should exceed the term of eight months, counted from the date of the signature thereof.

"This article is to have the same force and virtue as if inserted in the treaty to which this is an addition."[1]

APPENDIX C.

Extracts from the diary of President Polk.[2]

"Sept. 4 (1847).—If the war is still further prolonged, I said I would be unwilling to pay the sum which Mr. Trist had been authorized to pay, in settlement of a boundary by which it was contemplated that the United States would acquire New Mexico and the Californias; and that if Mexico continued obstinately to refuse to treat, I was decidedly in favor of insisting on more territory than the provinces named. I expressed the opinion further that as our expenses had been greatly enlarged by the obstinacy of Mexico in refusing to negotiate, since Mr. Trist's instructions were prepared in April last, if a treaty had not been

[1] This "additional article" was stricken out by the Senate by a vote of 48 to 2 and the treaty therefore received its final ratification without it. Sen. Ex. Doc. No. 52, p. 14, 1st Sess. 30th Cong.

[2] There is a type-written transcript of this unpublished document in the Lenox Library, New York, prepared by George Bancroft. These extracts have been collected from Bourne, *op. cit.* pp. 230-241; Schouler "Historical Briefs," pp. 121-124; Hart "History told by Contemporaries," Vol. IV, pp. 32-34.

made when we next heard from Mexico, that his instructions should be modified.'' The President writes that he had Trist recalled ''because his remaining longer with the army could not probably accomplish the objects of his mission, and because his remaining longer might and probably would impress the Mexican government with the belief that the United States were so anxious for peace that they would ultimately conclude one on Mexico's terms. Mexico must now sue for peace, and when she does we will hear her propositions.

''Sept. 7 (1847).—The distinct question submitted (to the Cabinet) was whether the amount which Mr. Trist had been authorized to pay for the cession of New Mexico and the Californias, and the right of passage through the Isthmus of Tehuantepec should not be reduced, and whether we should not now demand more territory than we now did. All seemed to agree that the maximum sum to be paid for the cession above described should be reduced. Mr. Buchanan suggested that this sum be reduced from 30 to 15 millions. * * * He suggested also that the line should run on the parallel of 30° or 31° 30′ of North Latitude from the Rio Grande to the Gulf of California, instead of on the parallel of 32° which Mr. Trist had been authorized to accept. * * * I expressed myself as being entirely agreed to reduce the sum to be paid from 30 to 15 millions and to modify the line as suggested by Mr. Buchanan.

''Nov. 9 (1847).—My views were in substance that we would continue the prosecution of the war with an increasing force, hold all the country we had conquered, or might conquer, and levy contributions upon the enemy to support the war, until a just peace was obtained; that we must have indemnity in territory, and that, as a partial indemnity, the Californias and New Mexico should under no circumstances be restored to Mexico, but that they should henceforward be considered a part of the United States and permanent territorial governments be estab-

lished over them; and that if Mexico protracted the war additional territory must be acquired as further indemnity. * * * I am fixed in my course, and I think that all the cabinet except Mr. Buchanan still concur with me, and he may do so yet.

"Nov. 23 (1847).—Mr. Walker (Secretary of the Treasury) was for taking the whole of Mexico, if necessary, and he thought the construction placed upon Mr. Buchanan's draft[1] by a large majority of the people would be that it looked to that object. I replied that I was not prepared to go to that extent, and furthermore that I did not desire that anything I said in the message should be so obscure as to give rise to doubt or discussion as to what my true meaning was; that I had in my last message declared that I did not contemplate the conquest of Mexico.

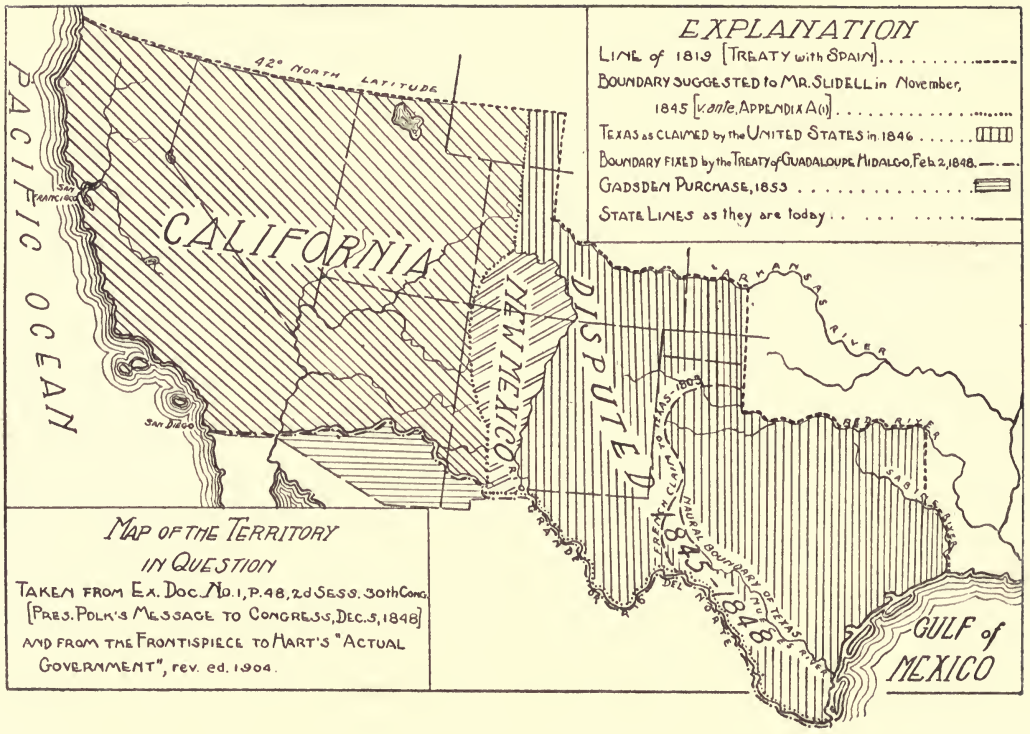
"Jan. 4, (1848).—This information (*i.e.* that Trist had renewed negotiations in spite of his recall) is most surprising. Mr. Trist has acknowledged the receipt of his letter of recall; he possesses no diplomatic powers. He is acting no doubt upon General Scott's advice. He has become the perfect tool of Scott. He is in this measure defying the authority of his government. * * * He may, I fear, greatly embarrass the government.

"Feb. 21, (1848).—I decided that under all circumstances I would submit it (the treaty) to the Senate for ratification, with a recommendation to strike out the tenth article. I assigned my reasons (to the Cabinet) for this decision. They were, briefly, that the treaty conformed on the main question of limits and boundaries to the instructions given Mr. Trist in April last,—and that though, if the treaty was now to be made, I should demand more, perhaps, to make the Sierra Madre the line, yet it was doubt-

[1] This refers to a paragraph drawn up by Mr. Buchanan for the annual message, saying that, in event of the occupation of the whole of Mexico by the United States forces, "we must fulfill that destiny which Providence may have in store for both countries."

ful, whether this could ever be obtained by the consent of Mexico. I looked to the consequences of its (the treaty's) rejection. A majority of one branch of Congress is opposed to my administration; they have falsely charged that the war was brought on and is continued by me, with a view to the conquest of Mexico, and if I were now to reject a treaty made upon my own terms as authorized in April last, with the unanimous approbation of the Cabinet, the probability is, that Congress would not grant either men or money to prosecute the war. Should this be the result, the army now in Mexico would be constantly wasting and diminishing in numbers, and I might at last be compelled to withdraw them, and then lose the two provinces of New Mexico and Upper California which were ceded to us by this treaty. Should the opponents of my administration succeed in carrying the next presidential election, the great probability is that the country would lose all the advantages secured by this treaty. I adverted to the immense value of Upper California, and concluded by saying that if I were now to reject my own terms as offered in April last, I did not see how it was possible for my administration to be sustained.

"Feb. 29, (1848).—From what I learn, about a dozen Democrats will oppose it (the treaty), most of them because they wish to acquire more territory than the line of the Rio Grande and the provinces of New Mexico and Upper California will secure. * * *."



MAP OF THE TERRITORY IN QUESTION

TAKEN FROM EX. DOC. NO. 1, P. 48, 2d SESS. 30th CONG. [PRES. POLK'S MESSAGE TO CONGRESS, DEC. 5, 1848] AND FROM THE FRONTISPIECE TO HART'S "ACTUAL GOVERNMENT", rev. ed. 1904.

SOURCES CITED AND USED IN THE PREPARATION OF THIS ESSAY.

PRIMARY.[1]

Benton, Thos. H.
"Abridgment of the Debates of Congress, 1789-1856." 17 vols., 1861.

Elmes, Webster.
"Executive Departments of the United States at Washington." 1 vol., 1880.

Hall, Frederick.
"The Laws of Mexico—a Compilation and Treatise." 1 vol., 1885.

Hart, Albert Bushnell, editor.
"American History Told by Contemporaries." 4 vols., 1897-1901.

Reports, Supreme Court, of the United States.

Revised Statutes of the United States. 1 vol., 2d ed., 1878.

Richardson, James Daniel, editor.
"A Compilation of the Messages and Papers of the Presidents, 1789-1899."

Senate and House Executive Documents, Journals and Records.[2]
Statutes at Large of the United States. Vols. 1-30, 1789-1899.

Treaties and Conventions of the United States. 1 vol., 1889.

Wharton, Francis.
"A Digest of the International Law of the United States, taken from Documents . . . and Decisions." 3 vols., 2d ed., 1887.

SECONDARY.

Bancroft, Hubert Howe.
"History of Mexico." 6 vols., 1885.

[1] Though its proper place is in this list of primary sources the diary of President Polk has not been entered here as it has not been published as a separate and complete volume. *Cf.* Appendix C.

[2] Those cited are mainly from the 1st and 2d Sessions, 30th Congress; specific reference will, however, be given as each document is noted.

Biklé, Henry Wolfe.
"An Essay on the Constitutional Power of Congress over the Territory of the United States." 1 vol., 1901.

Bourne, Edward G.
"Essays in Historical Criticism." 1 vol., 1901.

Bryce, James.
"The American Commonwealth." 2 vols., 3d ed., rev., 1895.

Butler, Charles Henry.
"The Treaty-making Power of the United States." 2 vols., 1902.

Chase, Lucien B.
"A History of the Polk Administration." 1 vol., 1850.

Cutts, James Madison.
"The Conquest of California and New Mexico in the years 1846-1847." 1 vol., 1847.

Foster, John W.
"A Century of American Diplomacy, 1776-1876." 1 vol., 1902.

Furber, G. C.
"The Mexican War." 1 vol., 1848.

Hart, Albert Bushnell.
"Actual Government as Applied under American Conditions." 1 vol., 2d ed., rev., 1904.
"Foundations of American Foreign Policy." 1 vol., 1901.

Hittell, Theodore H.
"History of California." 4 vols., 1885.

Holst, Hermann Eduard von.
"The Constitutional and Political History of the United States." Lalor's and Mason's Translation.[1] 8 vols., 1881.

Jay, William.
"A Review of the Causes and Consequences of the Mexican War." 1 vol., 2d ed., 1849.

Jenkins, John S.
"History of the War Between the United States and Mexico." 1 vol., 1859.

Ladd, H. O.
"History of the War with Mexico." 1 vol.

Livermore, Abiel Abbott.
"The War with Mexico Reviewed." 1 vol., 1850.

[1] On important points the original work has been consulted,—"Verfassung und Demokratie der Vereinigten Staaten von Amerika." 4 vols., 1873, 1878, 1881, and 1884.

Magoon, Charles E.
"Reports on the Law of Civil Government under Military Occupation by the Forces of the United States."[2] 1 vol., 1902.

Mansfield, Edward D.
"The Mexican War." 1 vol. 1848.

Phillimore, Sir Robert.
"Commentaries on International Law." 4 vols., 3d ed., 1879.

Ramsey, Albert C., translator.
"History of the War between Mexico and the United States." 1 vol., 1850.

Randolph, Carman F.
"The Law and Policy of Annexation." 1 vol., 1901.

Reid, Whitelaw.
"Problems of Expansion." 1 vol., 1900.

Ripley, R. S.
"The War with Mexico." 2 vols., 1849.

Schouler, James.
"A History of the United States of America under the Constitution." 6 vols., rev. ed., 1899.
"Historical Briefs." 1 vol., 1896.

Scott, Lieut. General Winfield.
"Memoirs." 2 vols., 1864.

Snow, Freeman.
"Treaties and Topics in American Diplomacy." 1 vol., 1894.

Wheaton, Henry.
"Elements of International Law." W. B. Lawrence, editor. 1 vol., 1855.

Wilson, Woodrow.
"A History of the American People." 5 vols., 1902.

Wright, General M. J.
"General Scott." 1 vol., 1894.

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[2] Submitted by Mr. Magoon as law officer of the Division of Insular Affairs to Secretary of War Root, and published by order of the latter. They may therefore be regarded as official documents.